

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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PATRICK SAGET, ) Case No.  
et al., ) 18-cv-01599-WFK-ST  
Plaintiffs )  
vs. )  
DONALD TRUMP, President )  
of the United States )  
et al., )  
Defendants )  
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Videotaped Deposition of Gene Hamilton  
Washington, D.C.  
January 3, 2019  
9:45 a.m.

Reported by: Bonnie L. Russo  
Job No. 450092

Magna Legal Services  
866-624-6221  
www.MagnaLS.com

1 Videotaped Deposition of Gene Hamilton held at:

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5 Mayer Brown, LLP

6 1999 K Street, N.W.

7 Washington, D.C.

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18 Pursuant to Notice, when were present on behalf

19 of the respective parties:

20

21

22

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15 Also Present:

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Brett A. Shumate, United States Department of

17 Justice

Rene Browne, United States Department of

18 Homeland Security

Nam Ngo, Videographer

19

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22 (Exhibits included with transcript.)

1 P R O C E E D I N G S

2

3 THE VIDEOGRAPHER: We are now on the  
4 record.

5 This begins Videotape No. 1 in the  
6 deposition of Gene Hamilton in the matter of  
7 Patrick Saget, Sabrina Badio Florial, et al.,  
8 versus Donald Trump, Department of Homeland  
9 Security, in the United States District Court  
10 for the Eastern District of New York, Case No.  
11 18-cv-01599-WFK-ST.

12 Today is January 3rd, 2019. And the  
13 time is 9:49 a.m.

14 This deposition is being taken at  
15 Mayer Brown, LLP, 1999 K Street, Northwest,  
16 Washington, D.C., 20006, at the request of  
17 Mayer Brown, LLP.

18 The videographer is Nam Ngo of Magna  
19 Legal Services. And the court reporter is  
20 Bonnie Russo of Magna Legal Services.

21 Will counsel and all present state  
22 their appearance and whom they represent.

1 MR. MEDOW: Jonathan Medow of Mayer  
2 Brown on behalf of plaintiffs.

3 MR. PIPOLY: Geoffrey Pipoly, Mayer  
4 Brown, on behalf of plaintiffs.

5 MR. TYLER: John Tyler, Department  
6 of Justice, on behalf of Defendant.

7 MR. SNELL: Kevin Snell, Department  
8 of Justice, on behalf of defendants.

9 MR. SHUMATE: Brett Shumate,  
10 Department of Justice, on behalf of the  
11 defendants.

12 MS. BROWN: Rene Browne, U.S.  
13 Department of Homeland Security, on behalf of  
14 the defendants.

15 THE VIDEOGRAPHER: Will the court  
16 reporter please swear in the witness.

17 GENE HAMILTON,  
18 being first duly sworn, to tell the truth, the  
19 whole truth and nothing but the truth,  
20 testified as follows:

21 EXAMINATION BY COUNSEL FOR PLAINTIFFS

22 BY MR. MEDOW:



1 Q. Good morning, sir.

2 Could you please state your name for  
3 the record.

4 A. Gene Hamilton.

5 Q. Is your formal name Gene or Eugene?

6 A. Gene.

7 Q. Have you been deposed previously?

8 A. I have.

9 Q. Now, you were deposed in the DACA  
10 litigation, Batalla Vidal, if I'm pronouncing  
11 it right, that case about a year ago?

12 A. Yes. It was in October of 2017.

13 Q. Yeah. You gave testimony on that  
14 day.

15 Did that deposition ever resume?

16 A. No.

17 Q. Have you given any other  
18 depositions?

19 A. No.

20 Q. You're an attorney, correct?

21 A. Correct.

22 Q. Did you graduate from law school in

1 2010?

2 A. Correct.

3 Q. Lee -- Washington Lee?

4 A. Correct.

5 Q. Are you licensed to practice as an

6 attorney?

7 A. Correct.

8 Q. In what states?

9 A. Virginia.

10 Q. Have you been continuously since

11 graduating from law school?

12 A. Yes.

13 Q. Are you represented today by

14 counsel?

15 A. Yes.

16 Q. Could you identify those counsels.

17 A. All of the wonderful folks sitting

18 to my right.

19 Q. The individuals who identified

20 themselves on the record, correct?

21 A. That's correct.

22 Q. Now, during the course of the

1 testimony today, sir, I'll try and make the  
2 questions as easy to understand for you as I  
3 can. I don't always succeed.

4 If, in fact, you do not understand a  
5 question, will you so indicate so I have an  
6 opportunity to rephrase?

7 A. I most certainly will.

8 Q. Thank you.

9 We talked about prior depositions.

10 Have you given any prior oral  
11 testimony in other context: trial, hearing,  
12 arbitration, anything of that nature?

13 A. I don't think so.

14 Q. Have you submitted any written  
15 testimony under oath in a proceeding?

16 A. I don't think so.

17 Q. Is there any reason at all that  
18 you're unable today to give complete and  
19 truthful testimony?

20 A. No.

21 Q. Are you employed?

22 A. I am.

1 Q. By whom?

2 A. The United States Department of  
3 Justice.

4 Q. Is your office here in Washington,  
5 D.C.?

6 A. Indeed.

7 Q. Is this where you are -- regularly  
8 transact business in D.C.?

9 A. Yes.

10 Q. Do you reside in the Washington,  
11 D.C. area?

12 A. I reside in the Commonwealth of  
13 Virginia.

14 Q. In the greater metropolitan D.C.  
15 area?

16 A. Correct.

17 Q. What town?

18 A. Fairfax.

19 Q. Do you have any plans to be in the  
20 New York metropolitan area in the next two  
21 weeks?

22 A. No.

1 Q. Do you have any plans to travel in  
2 the next two weeks?

3 A. Not that I know of at this moment.  
4 But my job can change that at a moment's  
5 notice.

6 Q. Any plans to testify in the trial of  
7 this matter?

8 A. No.

9 Q. Now, while you have been with the  
10 government, were you aware of the pendency of  
11 this lawsuit and others challenging various TPS  
12 determinations by Homeland Security?

13 A. Yes.

14 Q. Did you -- in the -- in the course  
15 of your employment, did you consult with any of  
16 the attorneys defending those lawsuits?

17 MR. TYLER: I'll object as vague.

18 THE WITNESS: Could you clarify what  
19 you mean by consulting with attorneys in those  
20 lawsuits.

21 BY MR. MEDOW:

22 Q. There were -- there were lawyers

1 representing the government in those lawsuits,  
2 right?

3 A. I would presume so, yes.

4 Q. Did you have any contact with those  
5 lawyers in terms of talking about the case?

6 A. In -- in general, yes. My duties  
7 are to advise the attorney general as to  
8 matters of import affecting the Department.

9 Q. Which -- in that -- given that, were  
10 you getting updates on the cases?

11 A. Occasional updates on things in the  
12 immigration space, yes.

13 Q. Have you reviewed any of the  
14 pleadings from any of the TPS lawsuits?

15 A. I might have.

16 Q. Any that you recall?

17 A. I don't recall any specifics. I  
18 tend to scan whatever's sent to me, pleadings  
19 or draft responses. Sometimes I assist with  
20 editing some of our documents; sometimes I  
21 don't. It just depends.

22 Q. Have you reviewed any of the

1 testimony given by government witnesses in  
2 connection with the TPS lawsuits?

3 A. No.

4 Q. Have you learned of the substance of  
5 any such testimony?

6 A. No.

7 Q. Have you spoken to any of the  
8 witnesses who have -- government witnesses who  
9 have given testimony in connection with the  
10 lawsuits regarding their testimony?

11 A. No.

12 Q. What did you do to prepare for  
13 today's deposition?

14 A. I met with this team of attorneys  
15 yesterday.

16 Q. Again, referring to the government  
17 lawyers here in the room?

18 A. That's correct.

19 Q. Okay. And you said you met  
20 yesterday?

21 A. We met yesterday.

22 Q. Was that the only preparation

1 session you had?

2 A. That's correct.

3 Q. How long did yesterday's session go?

4 A. I don't know. Off and on, four,  
5 five hours maybe.

6 Q. Was -- other than yourself and the  
7 attorneys in this room, was anybody else  
8 present during the preparation session?

9 A. There was one additional attorney  
10 here. And forgive me for not remembering his  
11 name. But he's employed by the Department of  
12 Justice as well.

13 Q. Was that one of the lawyers who will  
14 try the case for the government?

15 A. That's my understanding is he's on  
16 this case.

17 Q. Mr. Cho?

18 MR. TYLER: I -- I can represent it  
19 was not Mr. Cho. It was an attorney with my  
20 office here in the Department of Justice. He  
21 will not be trying this case.

22 MR. MEDOW: Thank you.



1 BY MR. MEDOW:

2 Q. Putting aside your preparation  
3 session, have you had -- have you discussed  
4 with anyone else what issues or questions might  
5 come up today?

6 A. No.

7 Q. Or what answers you might give in  
8 response?

9 A. No.

10 Q. Have you reviewed any documents in  
11 preparation for today's testimony?

12 A. The only document that I reviewed  
13 was yesterday we had a copy of INA Section 244  
14 to refresh my recollection.

15 Q. That's the TPS statute?

16 A. That's correct.

17 Q. Any other documents you've looked at  
18 in preparation?

19 A. No.

20 I -- I will clarify though that I  
21 did see a couple pages of something regarding  
22 a -- a desire to see something about a

1 nondisclosure agreement or something. But I  
2 don't know if you'd qualify that as a document  
3 or not, but...

4 Q. Okay. Are you referring to a  
5 request we made to see any confidentiality  
6 agreements you might have with the Trump  
7 transition entity?

8 A. I think so.

9 Q. Okay. So that request was passed on  
10 to you?

11 A. Yes.

12 Q. Have you furnished a copy of that  
13 confidential agreement to any attorneys --

14 A. No.

15 Q. -- representing the government?

16 Have you brought the agreement with  
17 you today?

18 A. No.

19 Q. Do you have a copy of the agreement?

20 A. I do.

21 Q. Is it in paper form or electronic  
22 form or both?

1 A. I have an electronic copy.

2 Q. Are you willing to produce a copy to  
3 -- of that agreement to us?

4 A. I'll have to consult with the  
5 transition counsel. But so long as he doesn't  
6 object, I wouldn't have a problem with doing  
7 so.

8 Q. Did you make any efforts yesterday  
9 to talk to transition counsel about that issue?

10 A. I did not talk about that issue.

11 Q. What did you talk about?

12 A. Just the fact that I was being  
13 deposed today.

14 Q. Who is transition counsel?

15 A. Kory Langhofer.

16 Q. Could you spell that, please.

17 A. K-O-R-Y, L-A-N-G-H-O-F-F-E-R [sic].

18 I believe he's with a firm called  
19 Statecraft, PLLC. I believe they're  
20 headquartered in Arizona.

21 Q. Who are the parties to that  
22 agreement?

1 A. Me and the transition entity.

2 Q. Who is -- or who or what is the  
3 transition entity?

4 A. It's my understanding that it's a  
5 transition 501(c)(4).

6 Q. Do you know the name of it?

7 A. I think it's Trump for America, Inc.

8 Q. Besides you and the transition  
9 entity, are there any other parties to that  
10 agreement?

11 A. Not to my knowledge.

12 Q. How long is the agreement?

13 A. I think it's in perpetuity.

14 Q. I mean number of pages,  
15 approximately.

16 A. Oh. Two pages maybe. Two or three.

17 Q. Was this a form, or was it a  
18 negotiated agreement?

19 A. It was a form.

20 Q. Provided to you by the transition  
21 entity?

22 A. Yes.

1 Q. Okay. What does it provide?

2 A. In -- in general --

3 Q. Yes.

4 A. -- or --

5 Q. Well, as far as you recall, what --

6 what -- what does the agreement provide?

7 We haven't seen it.

8 A. It says that I am -- have a legal

9 obligation to keep the confidential matters

10 that I've worked on during the transition

11 period confidential.

12 Q. Were there any exclusions in the

13 agreement from any such confidentiality

14 obligations?

15 A. I don't remember.

16 Q. There could be; you just don't

17 recall one way or the other?

18 A. There might be. I don't know.

19 Q. Let's talk briefly about your

20 background.

21 A. Okay.

22 Q. And not going to the beginning of

1 time.

2 Is it true that you interned with  
3 ICE, I-C-E, during one of your law school  
4 summers?

5 A. Yes.

6 Q. And for the record, ICE stands for  
7 what?

8 A. U.S. Immigration and Customs  
9 Enforcement.

10 Q. Okay. After graduating from law  
11 school in 2010, did you -- were you then  
12 employed by the Department of Homeland  
13 Security?

14 A. Yes.

15 Q. Were you in the secretary's honors  
16 program?

17 A. Yes.

18 Q. Were you in that program until you  
19 left in May of 2012?

20 A. Yes.

21 Q. During that roughly two-year period  
22 while you were in the honors program, did you

1 rotate through various departments or offices  
2 of Homeland Security?

3 A. I did.

4 Q. From that job, which you left in May  
5 of 2012, did you then go to Atlanta?

6 A. I did go to Atlanta.

7 Q. Were you employed by -- were you in  
8 the office of chief counsel of ICE in Atlanta?

9 A. I was.

10 Q. As assistant chief counsel?

11 A. That's correct.

12 Q. Did you stay in that position until  
13 February of 2015?

14 A. Yes.

15 Q. Starting in 20 -- February of 2015,  
16 did you come to D.C.?

17 A. I did.

18 Q. Were you general counsel to Senator  
19 Sessions on the Judiciary Committee?

20 A. I was.

21 Q. Were you -- this was a legal  
22 position, right?

1           A.       To the extent that any position on  
2     the Hill is a legal position, yes.

3           Q.       I'm not sure how to take that, but  
4     okay.

5                    You -- but your -- your position was  
6     general counsel?

7           A.       Yes.

8           Q.       Were you providing legal advice?

9           A.       Legal policy.

10          Q.       And who was your client; was it  
11     Senator Sessions or the committee?

12          A.       Primarily Senator Sessions. But  
13     also he was chairman of the subcommittee, and  
14     so it is kind of a hybrid.

15          Q.       The subcommittee is -- was the  
16     Subcommittee on Immigration and the National  
17     Interest?

18          A.       That's correct.

19          Q.       Did you leave that job on  
20     inauguration day, January 20th of 2017?

21          A.       Yes.

22          Q.       During the, again, roughly two year



1 -- so you spent roughly two years at that point  
2 with Senator Sessions?

3 A. Yeah, roughly.

4 Q. During that -- that two -- two-year  
5 period between 2015 and 2017, were you the  
6 staffer with primary responsibility for  
7 immigration issues?

8 A. I think that's a fair assessment.

9 Q. During that time period, did you  
10 have contact with Stephen Miller?

11 A. I did.

12 Q. Did you know Mr. Miller before  
13 working for Senator Sessions?

14 A. I did not.

15 Q. How did you come to know Mr. Miller  
16 during your time with Senator Sessions?

17 A. Stephen was the communications  
18 director. So we worked together.

19 Q. For Sessions?

20 A. Correct.

21 Q. Okay. So you were coworkers?

22 A. Correct.

1 Q. What does Mr. Miller do now?

2 A. Stephen is the senior policy adviser  
3 to the president.

4 Q. Does -- is his principal focus, to  
5 the extent you know, on immigration issues?

6 A. I -- Stephen works on immigration  
7 issues, but he covers a lot of issues for the  
8 president.

9 Q. But among them, immigration?

10 A. Yeah.

11 Q. Now, in -- on inauguration day in  
12 2017, did you become senior counselor to the  
13 secretary of Homeland Security?

14 A. Yes.

15 Q. And that secretary was John Kelly?

16 A. John Kelly was the secretary in  
17 January of 2017.

18 Q. Were you a political appointee?

19 A. Yes.

20 Q. Could you describe your duties and  
21 responsibilities as senior counselor to the  
22 secretary of DHS.

1           A.       Primarily to advise the secretary on  
2 matters falling within a portfolio and to carry  
3 out duties as directed by the secretary.

4           Q.       Among the -- your response -- was  
5 among your responsibilities to provide the  
6 secretary with policy advice?

7           A.       Correct.

8           Q.       Was it to assist in -- with policy  
9 formulation?

10          A.       If necessary, absolutely.

11          Q.       Did you edit documents in that job?

12          A.       I did edit documents --

13          Q.       Draft --

14          A.       -- from time to time.

15          Q.       Draft speeches?

16          A.       I was not the principal speech  
17 writer. There is a speech writer for -- in the  
18 communications shop at DHS. But I would  
19 edit --

20          Q.       Speeches?

21          A.       -- documents, speeches, anything.

22          Q.       Did you -- you were working for the

1 secretary himself, Mr. Kelly, right?

2 A. That's correct.

3 Q. Did you also work for the deputy  
4 secretary, Elaine Duke?

5 A. I did.

6 Q. How about the chief of staff,  
7 Ms. Nielsen?

8 A. I don't know that I worked for her,  
9 but I worked with her. She was the chief of  
10 staff.

11 Q. Now, you left that job to become --  
12 I'm sorry.

13 Secretary Kelly left that position  
14 to become White House chief of staff at some  
15 point, correct?

16 A. He did.

17 Q. Do you recall when that occurred?

18 A. It was late July 2017.

19 Q. Roughly the end of July?

20 A. The end of July.

21 Q. Who succeeded him as secretary, or  
22 as acting secretary, as the case may be?

1           A.       Elaine Duke was the senate confirmed  
2   deputy secretary. So pursuant to the Homeland  
3   Security Act, she assumed the duties of the  
4   secretary upon his departure.

5           Q.       Was she, at that point, an acting  
6   secretary?

7           A.       She was.

8           Q.       And did you continue to serve as  
9   senior counselor to the -- to the acting  
10   secretary, Ms. Duke?

11          A.       I did.

12          Q.       Were your duties and  
13   responsibilities the same as when Kelly had  
14   been the secretary?

15          A.       I think that's a fair assessment.

16          Q.       In your job as senior counselor to  
17   the either secretary or acting secretary of  
18   DHS, were you acting as an attorney?

19          A.       No.

20          Q.       You were offering policy as opposed  
21   to legal advice, correct?

22          A.       That's correct.

1 Q. When did you leave that position?

2 A. I guess it was the last week of  
3 October of 2017.

4 Q. Where did you go?

5 A. To the Department of Justice.

6 Q. Why did you make the switch?

7 A. It was a good opportunity to go back  
8 to working with Senator -- or Attorney General  
9 Sessions.

10 MR. MEDOW: Let me ask the  
11 reporter to mark our first exhibit today.

12 (Deposition Exhibit 132 was marked  
13 for identification.)

14 BY MR. MEDOW:

15 Q. Okay. Mr. Hamilton, you should now  
16 have what the reporter has marked as Exhibit  
17 132. It appears to be an article from CNN  
18 dated October 27, 2017, talking about your move  
19 from DHS to DOJ.

20 Why don't you take a moment to  
21 review the document and indicate for us when  
22 you have.

1 A. Okay.

2 Q. Have you seen this article  
3 previously?

4 A. I recall seeing it.

5 Q. Did the reporter reach out to you  
6 for comment?

7 A. Not to -- I don't think so.

8 Q. The reason I ask, if you look on the  
9 second page, there's a quotation from you.  
10 Was that as a result of your  
11 conversation with the reporter?

12 A. I don't believe I had a direct  
13 conversation with the reporter. I might have.  
14 I don't remember if I gave a -- a comment to  
15 our press shop --

16 Q. Who --

17 A. -- or if I gave the comment  
18 directly. But there is a comment in here.

19 Q. And it came from you.

20 A. It came from me.

21 Q. Now, the article indicates -- I'm  
22 looking on the first page towards the middle.

1 It says: "Two sources familiar with his  
2 actions told CNN that Hamilton first announced  
3 the move October 13th in a staff meeting, but  
4 it took some time for it to be finalized."

5 Is that true?

6 A. I do recall knowing about the  
7 opportunity to come to DOJ in early October.  
8 And I think it obviously did take some time to  
9 get finalized.

10 Q. The article goes on to say, a couple  
11 paragraphs down -- it says: "After the  
12 pushback" -- do you see that paragraph? -- "the  
13 personnel office," referring to White House  
14 personnel office, "relented late Wednesday  
15 evening shortly before Hamilton's previously  
16 scheduled farewell gathering."

17 The article is dated on a Friday,  
18 October 27th, from which I deduce Wednesday was  
19 October 25th.

20 Is that, in fact, the day you left  
21 DHS?

22 A. I don't remember. I think it was



1 that Friday, the 27th.

2 Q. 27th?

3 But it -- but it's -- it's clear --  
4 I think you said last week in October?

5 A. Yeah. I mean it was -- it was a,  
6 you know -- it was a Friday was my last day in  
7 the office. Saturday was the last day of the  
8 pay period. Sunday was the first day of the  
9 next pay period. And I was in the office of  
10 the Department of Justice on Monday.

11 Q. Okay. The article also says,  
12 towards the bottom of the first page, the third  
13 paragraph from the bottom: "One of the sources  
14 who is familiar with immigration issues said  
15 the departure was a 'big loss' for the agency.  
16 Hamilton was the key staffer liaising with the  
17 Hill and the White House on implementing the  
18 president's immigration agenda."

19 Do you see that?

20 A. I do see that.

21 Q. Is that a fair characterization?

22 MR. TYLER: I'll object to the

1 extent this is a packed sentence. If you could  
2 break it down perhaps to its various elements.

3 BY MR. MEDOW:

4 Q. I'm focusing on the second sentence:  
5 "Hamilton was the key staffer liaising with the  
6 Hill and the White House on implementing the  
7 president's immigration agenda."

8 Do you think that is a fair  
9 characterization?

10 A. That is one reporter's assessment of  
11 a statement from some anonymous source. If  
12 they think I was the key staffer, then I guess  
13 that's their statement of opinion.

14 Q. I'm asking whether you agree with  
15 that.

16 A. I was a staffer liaising with the  
17 Hill and the White House on immigration matters  
18 for the Department of Homeland Security.

19 Q. Do you think it a fair  
20 characterization to say your actions were  
21 implementing the president's immigration  
22 agenda?

1           A.       I don't know that it was -- I don't  
2       know that's necessarily a fair  
3       characterization. I mean, to the extent that  
4       there's overlap between the president's  
5       immigration agenda and the serving as senior  
6       adviser to the secretary of Homeland Security,  
7       to the extent that those have any kind of  
8       connection, sure.

9                   But if not, there's areas maybe  
10      where they depart. I don't know.

11          Q.       Do you -- can you think of any --  
12      any activities you did as the senior counselor  
13      to DHS secretary that was inconsistent with the  
14      president's immigration agenda?

15                 MR. TYLER: I'll object that it's  
16      vague, it's open.

17                 THE WITNESS: That would require me  
18      -- I mean that's a very vague, broad question  
19      that would require me to delineate every single  
20      portion of the president's agenda and recall  
21      everything I did as senior counselor to the  
22      secretary. And I don't think I'm capable of

1 doing that.

2 BY MR. MEDOW:

3 Q. Listen to my question. My question  
4 was simple.

5 As you sit here, can you identify  
6 anything you did as senior counselor to the  
7 secretary of DHS that was inconsistent with the  
8 president's immigration agenda?

9 MR. TYLER: Same objection. The  
10 witness has responded.

11 THE WITNESS: I -- I don't know.

12 BY MR. MEDOW:

13 Q. Can you recall anything?

14 A. I don't -- I don't recall at this  
15 moment. But I -- i honestly don't know.

16 Q. Who succeeded you at DHS?

17 A. I think -- there wasn't anyone on  
18 the first day. But eventually I think the --  
19 Tracy Short resumed the duties that I was  
20 performing.

21 Q. Tracy a female or male?

22 A. Tracy is a male.

1 I don't recall when he came on  
2 board. It might have been towards the end of  
3 November, maybe later.

4 Q. Okay. So now you moved to DOJ,  
5 correct?

6 A. Correct.

7 Q. What's your -- what position did you  
8 take a DOJ?

9 A. Counselor to the attorney general.

10 Q. Are you still -- is that still your  
11 role?

12 A. That's correct.

13 Q. What are your duties and  
14 responsibilities as counselor to the attorney  
15 general?

16 A. To provide legal and policy advice  
17 to the attorney general on issues primarily  
18 related to immigration, border security, some  
19 national security issues, advise him on  
20 litigation that is affecting our areas, and  
21 performing other duties as necessary.

22 Q. Are you the attorney general's lead

1     advisor on immigration-related issues?

2           A.     I think so, yes.

3           Q.     In your capacity as counselor to the  
4     attorney general, do you continue to have  
5     dealings with Homeland Security?

6           A.     Yes.

7           Q.     Are there particular individuals at  
8     Homeland Security you deal with on a -- more  
9     often than others?

10          A.     I interact with a lot of folks over  
11     there, just depending on what's needed by the  
12     situation.

13          Q.     Give me some names of people you  
14     deal with.

15          A.     We deal a lot with the DHS front  
16     office. So whether that's the secretary  
17     herself, Chad Wolf, Miles Taylor.

18          Q.     The secretary currently is  
19     Ms. Nielsen?

20          A.     That's correct.

21          Q.     Chad Wolf is chief of staff?

22          A.     That's correct.

1 Q. Okay. Miles Taylor?

2 A. Is deputy chief of staff.

3 Q. Are those the three -- since you've  
4 gone to Justice, are those the three people --  
5 well, I guess there was a period when Duke was  
6 the acting secretary.

7 When did Nielsen become secretary,  
8 if you recall?

9 A. I think she became secretary in  
10 December of 2017.

11 Q. So the -- so for the last few months  
12 of 2017 when you were at DOJ, you would have  
13 been dealing with Nielsen -- I'm sorry --  
14 dealing with Duke as opposed to Nielsen at --  
15 at Homeland Security?

16 A. Yeah.

17 Q. Other than either Duke, Nielsen,  
18 Wolf or Taylor, are there other folks at  
19 Homeland Security that you've been dealing with  
20 on any kind of regular basis while at DOJ?

21 A. I mean it depends on what you mean  
22 by "regular basis."

1 Q. Well, let me -- we've got Duke,  
2 Nielsen, Wolf, Taylor.

3 Are there other people you've dealt  
4 with at -- at Homeland Security on more than  
5 one occasion?

6 A. Yes.

7 Q. Can you give me some of those names?

8 A. Jeez. I mean it's a lots of people.  
9 I mean it depends on the issue and the subject.  
10 But I deal a lot with their general counsel's  
11 office, with the front office of ICE, CBP,  
12 USCIS. You name it.

13 I deal with a lot of different folks  
14 from a lot of different places.

15 Q. Who in general counsel's office do  
16 you deal with principally?

17 A. John Mitnick, George Fishman, Joe  
18 Maher, Hayley Chang, Nader Baroukh. A whole  
19 litany of folks.

20 Q. You mention USCIS. I think that  
21 acronym's going to come up today on more than  
22 one occasion.



1           Could you define it for the record?

2           A.       That's United States Citizenship and  
3       Immigration Services.

4           Q.       Is that a division or department of  
5       Homeland Security?

6           A.       It is a agency within the Department  
7       of Homeland Security.

8           Q.       Okay. You referred to the front  
9       office of USCIA -- USCIS.

10                  Who in the front office have you  
11       been dealing with?

12           A.       With the director, Francis Cissna;  
13       their chief counsel, Craig Symons; occasionally  
14       with Kathy Nuebel Kovarik; occasionally Kaitlin  
15       Vogt.

16                  I mean it just -- again, it depends.  
17       It's anyone that's required to get the job done  
18       for the attorney general.

19           Q.       Okay. We -- we touched briefly  
20       before on the Trump transition team, which you  
21       were a part of, correct?

22           A.       That's correct.

1 Q. Did you join in August of 2016?

2 A. That's correct.

3 Q. While you were working the first  
4 time with Senator Sessions, correct?

5 A. That's correct.

6 Q. Were you an advisor on  
7 immigration-related issues on the transition  
8 team?

9 A. Yes.

10 Q. Were you the lead person on  
11 developing all immigration-related policy  
12 issues for the transition team?

13 A. Yes.

14 Q. To whom did you report on the  
15 transition team?

16 A. It depends on the issue.

17 Q. Immigration issues.

18 A. This is an area where I need to  
19 think about the nondisclosure agreement.  
20 Because that includes personnel working on  
21 transition matters. There was a lot of people  
22 involved in the transition.

1           What I can say right now is that I  
2   don't recall TPS ever coming up during the  
3   transition period. I don't recall ever working  
4   on it. I don't recall ever advising anyone on  
5   it. I don't recall it being an issue that we  
6   dealt with at all.

7           Q.     The pending question was who did you  
8   report to.

9           Are you refusing to answer on the  
10   basis of the nondisclosure agreement?

11          A.     For the time being, yes. I would  
12   need to consult with counsel for the transition  
13   entity.

14          Q.     When do you anticipate doing that?

15          A.     It depends on if I need to.

16          Q.     What will determine whether you need  
17   to?

18          A.     Well, I just said that we didn't  
19   work on TPS. So I'm not sure what matters what  
20   happened on the transition period if it doesn't  
21   relate at all to this lawsuit.

22          Q.     That's for the court to decide,

1     isn't it, sir?

2           A.     I don't know.

3           Q.     You're a lawyer.

4                   You don't know?

5           A.     I'm a lawyer. It's indeed true.

6           Q.     Did you work with Stephen Miller  
7 while on the transition team?

8           A.     Stephen worked on the transition  
9 entity at the same time I did.

10          Q.     Did the two of you work together on  
11 any matters in connection with the transition  
12 team?

13          A.     Generally, yes.

14          Q.     Subsequent to the election of  
15 President Trump, did you discuss formulation of  
16 immigration policies with Miller while on the  
17 transition team?

18          A.     Subsequent to the election, so post  
19 election day, did I discuss immigration matters  
20 with Stephen?

21          Q.     Did you discuss -- discuss  
22 formulation of immigration policy with him?

1 A. I did.

2 Q. Did TPS come up in that context at  
3 all?

4 A. No.

5 Q. Prior to the election of the -- of  
6 President Trump, did you equally discuss  
7 formulation of immigration policy with Mr.  
8 Miller in connection with the transition team?

9 A. I did discuss immigration issues  
10 generally with Stephen.

11 Q. Okay. Did TPS come up then?

12 A. No.

13 Q. Did you recommend people for  
14 appointment to Homeland Security?

15 A. Yes.

16 Q. Including to USCIS?

17 A. I made a variety of recommendations.

18 Q. Who did you recommend?

19 MR. TYLER: What time frame are we  
20 dealing with here?

21 You said "transition."

22 Is this preelection? postelection?

1 MR. MEDOW: During the -- it's --  
2 it's -- it's not limited in time.

3 BY MR. MEDOW:

4 Q. Did you -- the question is who have  
5 you recommended for appointment to DHS?

6 MR. TYLER: Well, it gets into  
7 deliberative process privilege. So I'm trying  
8 also to understand the relevance of this  
9 testimony.

10 So to the extent that he was in  
11 government and he was making recommendations, I  
12 would object.

13 MR. MEDOW: I -- I get your point.  
14 Let me rephrase.

15 BY MR. MEDOW:

16 Q. Prior to January 20th of 2017, who  
17 did you recommend for appointment to DHS?

18 A. There were a lot of different names  
19 that were offered, but I -- I don't recall all  
20 of them.

21 Q. Give me the names you do remember.

22 A. And this is preelection day -- I

1 mean pre --

2 Q. Inauguration.

3 A. -- inauguration day.

4 I -- anywhere in the Department of  
5 Homeland Security?

6 Q. Let me narrow it down to USCIS or --  
7 or the front office of Homeland Security, one  
8 of the two.

9 A. I did recommend that Francis Cissna  
10 would be a good director; Craig Symons would be  
11 a good chief counsel; Karl Rich would be a good  
12 chief of staff; Kathy would be good wherever,  
13 Kathy could be.

14 Q. Kathy is?

15 A. Nuebel Kovarik.

16 Q. Who else?

17 A. I don't recall any else -- anyone  
18 else.

19 Q. Now, Ms. Nuebel Kovarik was also on  
20 the transition team, right?

21 A. The names and identities of people  
22 on the transition team I don't know if I'm

1 allowed to say under my NDA.

2 Q. Okay. Based on that, you're  
3 refusing to answer now?

4 A. At this point in time, yes.

5 Q. Aside from you and possibly  
6 Ms. Nuebel Kovarik, was there anybody else on  
7 the transition team who ended up at DHS?

8 A. Define "transition team."

9 Q. People working on the tran -- for  
10 the transition entity you identified earlier.

11 A. Well, John Kelly worked on the  
12 transition entity. Kirstjen Nielsen worked on  
13 the transition entity.

14 Q. Who else?

15 A. But they -- that's publicly known --  
16 publicly available information.

17 I don't recall other folks at this  
18 point in time.

19 Q. Did your work on the transition team  
20 generate work product?

21 MR. TYLER: Object to form. Vague.

22 THE WITNESS: What is a work



1 product?

2 BY MR. MEDOW:

3 Q. You don't know what "work product"  
4 means?

5 A. You tell me.

6 MR. TYLER: Objection. Vague.

7 THE WITNESS: What -- what -- what  
8 are you defining as "work product"?

9 BY MR. MEDOW:

10 Q. When you use the term "work  
11 product," what do you understand it to mean?

12 MR. TYLER: Objection.

13 Argumentative. Vague.

14 THE WITNESS: Tell me what you mean  
15 by "work product."

16 BY MR. MEDOW:

17 Q. You tell me what -- you tell me what  
18 you understand the term to mean.

19 MR. TYLER: You are asking this  
20 witness -- you used this term, and now you're  
21 demanding him to interpret it?

22 MR. MEDOW: It's a commonly used

1 term, Counsel. Everybody knows that.

2 If the witness wants to continue  
3 testifying that way, that's fine. I'm asking  
4 him, when he uses the term, how does he use it  
5 so then I can adopt his definition.

6 THE WITNESS: Why don't you offer me  
7 what you think --

8 MR. MEDOW: No.

9 THE WITNESS: -- of as "work  
10 product."

11 MR. MEDOW: I'll ask the question  
12 I've asked.

13 THE WITNESS: What do you mean by  
14 "work product"?

15 BY MR. MEDOW:

16 Q. What do you understand the term to  
17 mean?

18 MR. TYLER: Counsel, if you offered  
19 your own definition, you could possibly ask  
20 whether he accedes it to or not.

21 This is just becoming argumentative  
22 and really --

1 MR. MEDOW: No. It's -- it's -- the  
2 witness is just refusing to answer.

3 THE WITNESS: I'm just having -- I  
4 mean I want to answer your question what --

5 BY MR. MEDOW:

6 Q. I'm not here to answer your  
7 questions.

8 I've given you a question: What do  
9 you understand the term "work product" to mean?

10 A. Counsel, I just said I want to  
11 answer your question --

12 Q. And I --

13 A. -- the right way.

14 Q. Then answer the question --

15 A. Then I --

16 Q. -- I've just asked you.

17 A. What I'm asking for is for  
18 clarification, which is what you offered at the  
19 start of this deposition. If I didn't  
20 understand something, to ask you for  
21 clarification. I'm asking you for  
22 clarification.

1           Q.       My question is simply what is your  
2       definition of "work product"?

3                   MR. TYLER:   Now you're just  
4       badgering the witness.

5                   MR. MEDOW:   No.   He's not answer.

6                   MR. TYLER:   Well, because -- for  
7       good reason, as he explained.   And you gave him  
8       that opportunity to explain -- or to tell you  
9       of any question that you asked that was vague  
10      and he didn't understand.

11                  MR. MEDOW:   You're just --

12                  MR. TYLER:   So you have this  
13      obligation, Counsel.   Otherwise you're just  
14      engaging in harassment right now.

15                  We can call an end to the deposition  
16      sooner rather than later if that's your intent  
17      over the next how many hours.

18                  BY MR. MEDOW:

19           Q.       Are you able to answer the question?

20           A.       I asked for clarification.

21           Q.       Are you able to answer the question  
22      as --

1 MR. TYLER: Again, same thing. This  
2 is harassment and just argumentative.

3 THE WITNESS: I would like some  
4 clarification.

5 BY MR. MEDOW:

6 Q. I understand --

7 A. I would like you to oblige by what  
8 you offered at the beginning of this  
9 deposition.

10 Q. Oh, come on.

11 MR. TYLER: Counsel --

12 BY MR. MEDOW:

13 Q. I understand that, sir.

14 I've simply -- the question now is  
15 are you unable to answer the question that was  
16 posed to you?

17 MR. TYLER: Meaning what?

18 THE WITNESS: I am unable to answer  
19 to the extent that I do not understand what  
20 your definition of the term "work product"  
21 means.

22 BY MR. MEDOW:

1 Q. Do you consider memoranda to be work  
2 product?

3 MR. TYLER: Objection. Really  
4 vague.

5 THE WITNESS: Could you -- could a  
6 memoranda be a work product hypothetically?  
7 Sure.

8 BY MR. MEDOW:

9 Q. Can you give me other examples of  
10 what could hypothetically be work product?

11 MR. TYLER: Same objection.

12 I mean the -- the witness has no  
13 idea whether you're using it as a term of art  
14 within the meaning of Rule 26; within the  
15 meaning of -- on Supreme Court precedent, for  
16 example; or whether you have something else  
17 entirely in mind, something more colloquial in  
18 meaning.

19 MR. MEDOW: That's exactly what I  
20 have in mind. It is not Rule 26 work product.

21 MR. TYLER: Well, then why don't --

22 BY MR. MEDOW:

1 Q. And my --

2 MR. TYLER: -- you make yourself --

3 MR. MEDOW: I thought it was --

4 MR. TYLER: -- plain.

5 MR. MEDOW: I thought it was

6 perfectly clear.

7 MR. TYLER: Why are we engaging in  
8 these kind of shenanigans?

9 BY MR. MEDOW:

10 Q. When using the term --

11 A. I just want to answer your question  
12 carefully.

13 Q. I --

14 A. That's all.

15 Q. I appreciate --

16 A. I'm trying -- I'm trying to be a  
17 good witness for you.

18 Q. I'm using the term colloquially. I  
19 just want to know your colloquial understanding  
20 of the term "work product."

21 A. I mean that's a term that could have  
22 a variety of meanings -- meanings. It could

1 mean memos, briefing materials, you name it.

2 It could have a -- a thousand different uses.

3 Q. Under that definition, did you  
4 generate any work product in connection with  
5 your work on the transition team?

6 A. If we use it as broadly as possible,  
7 sure.

8 Q. And you did so with respect to  
9 immigration issues, I take it?

10 A. Yes.

11 Q. What type of work product did you  
12 generate in connection with immigration issues?

13 MR. TYLER: Objection. Vague.

14 THE WITNESS: What kinds of work  
15 product. So as broadly as possible. Could --  
16 a variety of things. Could be briefing  
17 materials, memos, you name it.

18 BY MR. MEDOW:

19 Q. I -- I understand it could be.  
20 I'm asking what work product you did  
21 generate in connection with immigration issues.

22 MR. TYLER: Objection. Vague.



1                   THE WITNESS: It's -- it's been two  
2   years since the transition period. I don't  
3   recall every work product that I worked on. I  
4   don't recall many products that we worked on  
5   other than briefing materials, general briefing  
6   materials.

7                   BY MR. MEDOW:

8           Q.       What do you mean by "general  
9   briefing materials"?

10          A.       Materials to brief senior leaders  
11   who intended to advice the president elect of  
12   the United States.

13          Q.       For whom did -- did you prepare  
14   briefing materials?

15          A.       The transition entity.

16          Q.       Who in the transition entity?

17          A.       This is an -- again, an area where  
18   I -- I want to be careful with the  
19   nondisclosure agreement as to who I  
20   specifically performed work for.

21                   I would like the opportunity to  
22   consult with counsel for the transition entity

1 on that issue if this -- if we need to go  
2 further into it.

3 Q. So at this point you're refusing to  
4 answer the question.

5 A. At this point, yes.

6 MR. MEDOW: Let me ask the  
7 reporter to mark the next exhibit.

8 (Deposition Exhibit 133 was marked  
9 for identification.)

10 BY MR. MEDOW:

11 Q. Mr. Hamilton, you should now have  
12 what's been marked as Exhibit 133.

13 Let me tell you where we got this.  
14 This is a printout from an immigration page  
15 from a web site [www.greatagain.gov](http://www.greatagain.gov).

16 You see at the top?

17 A. Uh-huh.

18 Q. Was that, in fact, the web site of  
19 the Trump transition team?

20 A. I seem to recall that might -- might  
21 have been their outward facing web site.

22 Q. And this was a -- we pulled this off

1 the Wayback Machine. It's a December 3rd,  
2 2016, so preelection, printout.

3 And do you see the title is  
4 "Immigration"?

5 A. I do.

6 Q. And if you go to the second page of  
7 the exhibit, it says: "A Trump administration  
8 would execute on the following 10-point plan to  
9 restore integrity to our immigration system,  
10 protect our communities and put America first."

11 Do you see that?

12 A. I do see that.

13 Q. Did you take the lead in putting  
14 together this 10-point plan?

15 MR. TYLER: I'll object on grounds  
16 of relevance.

17 THE WITNESS: Did I take the lead on  
18 putting -- could you clarify?

19 BY MR. MEDOW:

20 Q. Well, we see a 10-point plan was  
21 published on the web site.

22 Were you involved in the generation

1 of this 10-point plan?

2 A. Yes.

3 Q. What was your role?

4 A. I helped advise as to policy issues  
5 that the president elect could put forth in a  
6 10-point plan.

7 Q. Were you in charge -- were you the  
8 person on the transition team in charge of  
9 putting together this 10-point plan?

10 MR. TYLER: Objection. Vague.

11 THE WITNESS: I was the lead for the  
12 immigration team on the transition entity.

13 BY MR. MEDOW:

14 Q. And in that capacity, was one of  
15 your jobs to put together this 10-point plan?

16 A. Probably.

17 Q. Who else worked on it?

18 A. That brings up the same issue that  
19 we've talked about.

20 Q. About the nondisclosure issue and --

21 A. That's correct.

22 Q. And you're refusing to answer that

1 question, too, on that ground?

2 A. That's correct at this time.

3 Although I'll reiterate my testimony that no  
4 one talked about TPS to my recollection; no one  
5 worked on TPS; TPS wasn't something that was  
6 discussed --

7 MR. TYLER: And this --

8 THE WITNESS: -- at all.

9 MR. TYLER: -- document does not  
10 refer the TPS; hence, my objection on grounds  
11 of relevance.

12 MR. MEDOW: Object to the speaking  
13 objection.

14 BY MR. MEDOW:

15 Q. Are you familiar with the term "day  
16 one book"?

17 A. I am.

18 Q. What does it refer to?

19 A. A series of action items that a new  
20 administration could potentially take.

21 Q. Does "day one" refer to the day  
22 after election?

1           A.       It could be the day of election;  
2       could be the day after election.

3           Q.       One of the two?

4           A.       One of the two.   Could be the first  
5       business day after the election, given that the  
6       inauguration was on a Saturday.   I don't know.

7           Q.       Was the day one book a compilation  
8       of potential policy proposals on immigration?

9           A.       There were a variety of materials  
10       prevented -- presented across a variety of  
11       subject areas.

12          Q.       Was -- was one subject area  
13       immigration?

14          A.       Yes.

15          Q.       In connection with immigration, were  
16       the -- did the book contain a compilation of  
17       potential policy proposals?

18          A.       I think so.

19          Q.       Formulated by the transition team?

20          A.       Yes.

21          Q.       Was the -- was there a physical  
22       book, a binder of some kind?

1 A. Probably.

2 Q. Did you ever see one?

3 A. I think so, but I don't -- I mean  
4 we're talking about two years ago. I don't  
5 remember if someone put it in an actual binder  
6 or -- or what.

7 Q. Did the day one book include  
8 legislative proposals?

9 A. I don't recall.

10 Q. I'll represent to you -- and to try  
11 to avoid burdening the record with a lot of  
12 paper, though, if you want to see it, just let  
13 me -- just tell me.

14 A. Okay.

15 Q. This -- I have your transcript from  
16 the prior deposition you gave in October.

17 A. October of 2017?

18 Q. Yeah. October 20, 2017, in the  
19 matter of Martin Jonathan Batalla Vidal versus  
20 Elaine C. Duke.

21 A. Okay. Great.

22 Q. And I'm looking at Page 199 --

1           A.       Okay.

2           Q.       -- lines 18 through 20: "To your  
3 knowledge, did the day one book include any  
4 legislative proposals?"

5                    Answer: "I think so."

6                    Does that refresh your recollection  
7 at all as to whether or not there were  
8 legislative proposals in the day one book?

9           A.       Not necessarily refresh my  
10 recollection. I mean it refreshes my  
11 recollection about what I said at that  
12 deposition. But I'll just repeat that it's  
13 been two years, and I -- I don't -- I don't  
14 know.

15          Q.       Would you stand by what you said in  
16 the testimony I just read?

17          A.       I think so. I will stand by my  
18 testimony then because, at that point in time,  
19 maybe I thought so. But --

20          Q.       You were --

21          A.       -- I mean today I -- I don't -- I  
22 don't remember.



1 Q. When you gave that testimony, you  
2 were closer in time to the events, correct?

3 A. That's correct.

4 Q. Did the day one book include any  
5 proposed changes to policy?

6 A. I think so, yes.

7 Q. Okay. Let's -- the term "TPS" has  
8 come up today. I guess that's not a surprise.  
9 So we're all clear, what does "TPS"  
10 refer to?

11 A. Usually means Temporary Protected  
12 Status.

13 Q. Is there -- I think we referred to  
14 it before.

15 There is a statute commonly referred  
16 to as the TPS statute?

17 A. There is a statute, Section 244 of  
18 the Immigration and Nationality Act. I think  
19 it's codified at 8 USC 1254.

20 Q. Was that statute enacted in 1990  
21 during the first President Bush's  
22 administration?

1 A. That sounds correct.

2 Q. Prior to January 20th of 2017 when  
3 you became senior counselor to the secretary of  
4 Homeland Security, prior to then had any of  
5 your work concerned TPS?

6 A. Yes.

7 Q. How so?

8 A. Well, as an assistant chief counsel  
9 at ICE, we dealt with people who were TPS  
10 beneficiaries on a regular basis or TPS  
11 applicants in some cases.

12 There are laws that pertain to what  
13 they're eligible for to receive in immigration  
14 court regarding, you know, TPS or their ability  
15 to be removed from the United States.

16 And so it was something that you  
17 would encounter on a fairly regular basis.

18 Q. How else did you have occasion to  
19 deal with TPS prior to January 20th of 2017?

20 A. I mean general familiarity with the  
21 immigration laws and studying immigration laws  
22 in general. I don't recall any other specific

1 projects, but --

2 Q. Well, let --

3 A. -- I know it came up at ICE from  
4 time to time.

5 Q. Let -- let's focus on your period --  
6 the first time you worked for Senator Sessions  
7 at -- as his general counsel on the judiciary  
8 committee.

9 Did the -- and you mentioned there  
10 was a subcommittee specifically on immigration,  
11 immigration and the national interest, I think  
12 it was?

13 A. That's correct.

14 Q. Did that subcommittee, during your  
15 tenure there, take up any issues relating to  
16 TPS?

17 A. I don't remember.

18 Q. The subcommittee held hearings,  
19 right?

20 A. That's correct.

21 Q. I think you -- you testified in the  
22 prior deposition ten or more during the two

1 years you were there?

2 Does that sounds about right?

3 A. That sounds about right. I -- I  
4 don't recall specifically.

5 Q. Did any of the hearings -- the  
6 subcommittee's hearings pertain to TPS?

7 A. I -- I don't remember. We did --  
8 covered a lot of topics. I don't want to tell  
9 you wrong.

10 Q. Did the subcommittee or the  
11 judiciary committee itself consider any  
12 legislation -- new legislation relating to TPS?

13 A. I don't recall any legislation being  
14 introduced in that congress that dealt with  
15 TPS, but -- it could have happened, but I -- I  
16 just don't remember.

17 Q. Do you recall any consideration,  
18 during your time at the judiciary committee, of  
19 TPS issues?

20 A. What do you mean by "consideration"?

21 Q. Let me -- during your time with the  
22 judiciary committee, were any legislative

1 amendments or changes to the TPS statute under  
2 consideration?

3 A. I -- I don't -- I don't have any  
4 idea. I don't remember.

5 Q. Do you recall any?

6 A. I don't recall anything.

7 Q. Now, you've said, on -- in moving to  
8 the transition team, you said a couple of times  
9 that TPS never came up?

10 A. I don't remember ever talking about  
11 TPS.

12 Q. Okay. Let me just make sure -- poke  
13 a little more and see if your -- where your  
14 recollection is.

15 You -- you talked about discussing  
16 formulation of policy with Stephen Miller.

17 In any of those conversations did  
18 TPS come up?

19 A. No.

20 Q. Looking again at the 10-point plan  
21 in Exhibit 133 -- do you -- you have that in  
22 front of you now?

1 A. I do.

2 Q. Do any of those items 1 through 10  
3 relate to TPS?

4 A. No. Nope.

5 Q. Item No. 5 is "Cancel  
6 unconstitutional executive orders and enforce  
7 all immigration laws," correct?

8 A. That's what it says.

9 Q. Enforcing all immigration laws would  
10 include TPS, I assume?

11 Is that a fair statement?

12 A. I don't -- I mean that's somewhat  
13 argumentative. Enforcing all immigration laws  
14 I think could be characterized as following the  
15 immigration laws as they're written.

16 Q. One of which was TPS?

17 A. TPS Section 244 of the INA is one of  
18 the immigration laws.

19 Q. Item No. 10 is "Reform legal  
20 immigration to serve the best interests of  
21 America and its workers," correct?

22 A. That's what it says.

1 Q. And that was part -- part of the  
2 10-point plan to restore integrity to our  
3 immigration system, protect our communities and  
4 put America first, correct?

5 A. It's No. 10.

6 Q. On that list?

7 A. On that list.

8 Q. In the -- I can't remember if I  
9 asked you.

10 In the day one book, did any of the  
11 legislative proposals relate to TPS?

12 A. Well, I've already said that I don't  
13 remember that there were legislative proposals  
14 at this point in time today. So I couldn't  
15 tell you.

16 Q. And did any of the proposed policy  
17 changes in the day one book relate to TPS?

18 A. As I've said, I don't recall TPS  
19 ever being discussed during transition. So it  
20 would be strange for it to not be discussed and  
21 then appear in a policy book. That wouldn't  
22 make sense.

1 Q. During your time on the transition  
2 team, did you deal with outside groups or  
3 individuals on immigration issues?

4 A. Not really.

5 Q. Are you familiar with the  
6 organization FAIR, F-A-I-R?

7 A. I am.

8 Q. What does "FAIR" stand for?

9 A. I think it's Federation For America  
10 Immigration Reform. I might have botched a  
11 word, but I think that's what it stands for.

12 Q. During the transition team, did you  
13 deal with any representatives of FAIR?

14 A. Rep -- define what you mean by  
15 "representatives of FAIR."

16 Q. Persons acting on behalf of FAIR.

17 A. No one acting on behalf of FAIR.

18 Q. Did you deal with people who had  
19 some connection with FAIR?

20 MR. TYLER: Objection. Vague.

21 THE WITNESS: What do you mean by  
22 "some connection"?



1 BY MR. MEDOW:

2 Q. Well, I -- you seem to be -- you  
3 said not people acting on behalf of FAIR, which  
4 led me to think that there's somebody who has  
5 some connection to FAIR but wasn't acting on  
6 their behalf that you might have had dealings  
7 with.

8 Is that what you were trying to  
9 imply?

10 A. There might have been people who had  
11 past experience with them. But I -- they  
12 weren't acting on behalf of FAIR.

13 Q. Let me hand you what's been  
14 previously marked as Exhibit 97.

15 It's a multi-page document entitled  
16 "FAIR Immigration Priorities for the 2017  
17 Presidential Transition, a Special Report from  
18 the Federation for American Immigration  
19 Reform."

20 Do you see that?

21 A. I do see it.

22 Q. Have you seen this before?

1 A. I don't remember.

2 Q. You may have, but you're not sure?

3 A. I -- I don't remember.

4 Q. You're free to look at whatever you  
5 want. But I'm going to direct your attention  
6 to the bottom of Page 15, carry over to 16.

7 A. Okay.

8 Q. And the last bullet item says: "DHS  
9 must issue regulations making illegal aliens  
10 ineligible for TPS. The secretary of Homeland  
11 Security must revoke TPS for any country that  
12 has received more than two renewals. Future  
13 grants on TPS must only occur in limited  
14 circumstances."

15 Do you see where I've read?

16 A. I see that.

17 Q. Were any of these proposals by FAIR  
18 brought to your attention?

19 A. No.

20 MR. TYLER: Objection. Compound.

21 BY MR. MEDOW:

22 Q. In particular, the proposal by FAIR

1     that the secretary must revoke TPS for any  
2     country that has received more than two  
3     renewals, was that idea ever brought to your  
4     attention in connection with the transition?

5           A.     No.

6           Q.     Or thereafter?

7           A.     No. And it doesn't make sense.

8           Q.     Why is that?

9           A.     TPS -- the conditions for granting  
10    or extending -- designating -- redesignating  
11    TPS are set out in statute.

12          Q.     And is the -- is the proposal by  
13    FAIR here -- is what you're saying the proposal  
14    by FAIR here is inconsistent with the statute?

15          A.     I -- I don't know. It just -- it --  
16    it doesn't make sense to me. Because it --  
17    there's no specific statutory citation. I  
18    don't know exactly what they mean by you must  
19    revoke for any country's that's received two  
20    renewals.

21                   I don't -- I don't even know what  
22    that means in relation to the statute.

1 Q. Is there any -- to your knowledge,  
2 having read the statute, is there any language  
3 in the statute that requires the secretary to  
4 revoke TPS for any country that has received  
5 more than two renewals?

6 MR. TYLER: Objection. Calls for  
7 legal conclusion.

8 THE WITNESS: I'm -- I am not  
9 familiar with anything in Section 244 of the  
10 INA that has such a provision.

11 BY MR. MEDOW:

12 Q. Did you meet with representatives of  
13 FAIR after January 20th of 2017 while you were  
14 at DHS?

15 A. There might have been one meeting  
16 that we had with a number of outside groups, I  
17 want to say like late spring of 2017. FAIR may  
18 have been one of them.

19 Q. I will represent to you you  
20 testified in the DACA case that, consistent  
21 with what you just said, you had a meeting with  
22 FAIR attend by representatives of FAIR, another

1 group Center For Immigration Studies, CIS --

2 A. Yes. Uh-huh.

3 Q. -- and Numbers U.S.A., another  
4 group.

5 Does that --

6 A. Sure. Yeah. I --

7 Q. Is that true?

8 A. -- I recall -- I recall that  
9 meeting --

10 Q. Okay. Did --

11 A. -- generally.

12 Q. Did the subject -- anything come up  
13 during that meeting relating to TPS?

14 A. I couldn't tell you.

15 Q. You just don't remember one way --

16 A. I don't remember.

17 Q. -- or the other?

18 Sorry. You got to respond audibly?

19 A. I -- I -- I don't remember.

20 Q. At that meeting was FAIR represented  
21 by a Mr. Robert Law?

22 A. I think Rob was there.

1 Q. Was that the -- this meeting in the  
2 spring of 2017, was that the first time you had  
3 met Mr. Law?

4 A. No.

5 Q. How long had you known him?

6 A. I had crossed paths with Rob in my  
7 capacity on the Hill previously.

8 Q. With Senator Sessions?

9 A. Correct.

10 Q. And what -- what brought you into  
11 contact with Law in that context?

12 A. As most Hill staffers are familiar,  
13 there are a number of outside groups that want  
14 to get your attention, want to get your boss's  
15 attention on any number of issues.

16 And so I engaged with outside groups  
17 from all across the spectrum on many occasions  
18 as part of my job to help inform the senator.

19 Q. In that context, when you were on  
20 the Hill, did any of your interactions with Mr.  
21 Law relate to TPS?

22 A. I couldn't tell you. I don't

1 remember.

2 Q. Do you recall any outside groups --  
3 during your time on the Hill with Senator  
4 Sessions, did any outside groups reach out to  
5 you with respect to TPS issues?

6 A. I don't remember.

7 Q. May have but you just don't recall?

8 A. I don't think -- I -- that doesn't  
9 ring a bell.

10 Q. Is -- is there anything at all you  
11 remember on that subject?

12 A. No.

13 Q. After your -- the meeting with Mr.  
14 -- I'm sorry.

15 After the meeting in the spring of  
16 2017 with the three groups we mentioned, did  
17 you have any further dealings with Mr. Law  
18 while you were at DHS?

19 A. I don't remember. Because I -- it's  
20 my understanding, I think -- I think Rob still  
21 works there. I -- because I'm pretty sure I've  
22 had some e-mail contact with him in some

1 capacity where I've seen his name on e-mail.

2 So I don't know if he came on when I  
3 was still there or if he came on aft -- I  
4 just -- I don't remember.

5 Q. As you just mentioned, Mr. Law  
6 ultimately joined DHS, correct?

7 A. I think so, yeah.

8 Q. Do you know what his position is?

9 A. I don't.

10 Q. Were you involved at all in the  
11 process of hiring him?

12 A. Not -- no.

13 Q. Did you recommend him?

14 A. I might -- I might have recommended  
15 his name to someone at some point in the past.  
16 But I -- I don't recall specifically.

17 Q. Do you know who did hire him or who  
18 was in charge of hiring him?

19 A. I don't know who was in charge of  
20 making a hiring decision. I don't know if you  
21 would say that was the director or -- I don't  
22 know.



1           Q.       Now, as of January 20, 2017 when you  
2       joined DHS, the TPS statute had been on the  
3       books roughly -- or more than 25 years,  
4       correct?

5           A.       I -- seems to add up.

6           Q.       It is listed on the DHS web site as  
7       a humanitarian program; is that true?

8           A.       I don't know how it's listed on  
9       their web site.

10                    I'm not sure the relevance of that,  
11       how it's listed on a web site, what that means.

12                    (Deposition Exhibit 134 was marked  
13       for identification.)

14                    BY MR. MEDOW:

15           Q.       Okay. Mr. Hamilton, you should have  
16       what's been marked by the reporter as Exhibit  
17       134.

18                    This is a printout we did from the  
19       USCIS section of the DHS web site.

20           A.       When did you print it?

21           Q.       Yesterday, I believe.

22                    I'll just read -- do you see on the

1 first page -- well, the -- the title is --  
2 under USCIS there's the word "humanitarian."

3 Do you see that?

4 A. I see that.

5 Q. And putting aside the -- then  
6 there's an entry about Cubans. Let's pass on  
7 that.

8 The next section says: UC -- "USCIS  
9 provides a number of humanitarian programs and  
10 protection to assist individuals in need of  
11 shelter or aid from disasters, oppression,  
12 emergency medical issues and other urgent  
13 circumstances."

14 Do you see that?

15 A. I do see that.

16 Q. And one of the programs listed in  
17 this section of the web site is TPS, correct?

18 A. On the next page there is a section  
19 that says "Temporary Protected Status." And it  
20 says: "USCIS may grants TPS to eligible  
21 nationals of certain countries or parts of  
22 countries who are already in the United States

1 to stay here for a limited period of time.

2 Eligible individuals without nationality who  
3 last resided in the designated country may also  
4 be granted TPS."

5 Q. Do you agree with the  
6 characterization of TPS as a humanitarian  
7 program?

8 A. Is it a humanitarian program? I  
9 mean that's how the agency --

10 Q. I understand that.

11 A. -- qualifies it.

12 Q. I'm asking do you agree with that  
13 characterization?

14 A. Depends on how you define  
15 "humanitarian." TPS generally has three  
16 grounds upon which TPS can be designated. You  
17 can make arguments that there are humanitarian  
18 purposes. But it depends on what you define as  
19 humanitarian.

20 What matters is what's in the  
21 statute, not how an agency classifies it on  
22 their web site.

1 Q. Was -- while you were at DHS, was  
2 there any discussion you recall about whether  
3 or not the characterization of the program as  
4 humanitarian was appropriate or not?

5 A. I couldn't tell you. I don't...

6 Q. You don't remember?

7 A. I don't remember.

8 Q. Did you help Senator Sessions  
9 prepare for his confirmation hearing as  
10 attorney general?

11 A. I seem -- yes. I did some  
12 assistance. That's correct.

13 Q. Okay. His hearing was in January of  
14 2017, correct?

15 A. I think so.

16 Q. I'll represent to you -- we can -- I  
17 can show you the language if you want -- he  
18 said during that testimony that -- I'm quoting  
19 here: "The immigration policy of the United  
20 States should serve the national interest."

21 Do you agree with that?

22 A. Sounds like his statement.

1 Q. Something you agree with?

2 A. That the immigration policy of the  
3 United States should serve the national  
4 interest. I think that's pretty  
5 unobjectionable.

6 Q. Objection or unobjection?

7 A. Unobjectionable.

8 Q. As of January 20th of 2017, did you  
9 think the TPS program served the national  
10 interest?

11 A. What do you mean by that?

12 Q. What I just asked.

13 A. Well, it depends on what you define  
14 as "the national interest."

15 Q. As you define it, did you believe  
16 the program served the national interest?

17 A. TPS certainly can serve the national  
18 interest.

19 Q. How?

20 A. Well, it depends on if the  
21 secretary, in his or her discretion, decides  
22 that one of the three statutory categories are

1 met and makes that determination, then sure it  
2 can advance the national interest.

3 But it depends on what you define as  
4 the national interest. There's a lot of ways  
5 it could or could not serve the national  
6 interest.

7 Q. How could it not serve?

8 A. That calls for a lot of speculation  
9 on my part in a hypothetical situation.

10 I'm not going to sit here and recite  
11 every litany of reasons why TPS couldn't serve  
12 the national interest, just like I'm not going  
13 to sit here and tell you every reason why it  
14 could serve the national interest.

15 It's a very fact-specific  
16 determination.

17 Q. As of January 20th, 2017, did you  
18 think the TPS had been properly run or  
19 administered by prior administrations?

20 MR. TYLER: Objection. Vague.

21 THE WITNESS: What to you mean by  
22 "properly run"?

1                   And what do you mean by "prior  
2   administrations"?

3                   BY MR. MEDOW:

4           Q.       Well, let's -- let's back up a  
5   little to more objective level and talk a  
6   little bit about the process under TPS.

7           A.       Okay.

8           Q.       Countries get designated by the  
9   secretary under the statute; is that true?

10          A.       After the Homeland Security Act of  
11   2002, yes. Prior to that, it was the attorney  
12   general.

13          Q.       And after a country is designated,  
14   is it true that the secretary  
15   thereafter periodic -- periodically reviews  
16   whether or not that designation should continue  
17   or end or be redesignated, those types of  
18   things?

19          A.       In general, yes.

20          Q.       Okay. The ultimate decision, post  
21   the statute you just mentioned, is with the  
22   secretary of Homeland Security, right?

1           A.       That's correct.

2           Q.       But was the process for making the  
3 decisions for the secretary to receive a  
4 recommendation from the director of USCIS?

5           A.       During which period?

6           Q.       Well, I'm -- I'm asking, to your  
7 knowledge, to the extent you have it, for the  
8 statute generally.

9                   And as far as you know, has the  
10 process been for the secretary to get a  
11 recommend -- recommendation from the director  
12 of USCIS?

13          A.       I know that's what happened. It's  
14 my understanding that that's what happened, at  
15 least when -- in this administration.

16          Q.       Trump.

17          A.       I couldn't speak to -- I -- I could  
18 speculate that that's what they did in prior  
19 administrations.

20          Q.       Now, when you joined DHS, was there  
21 a director of USCIS in place?

22          A.       Was there a director?



1                   With -- do you mean like a senate  
2 confirmed? Do you mean someone performing the  
3 duties of the director?

4           Q.       Let's start --

5           A.       What do you mean.

6           Q.       Senate -- let's start with senate  
7 confirmed.

8           A.       There was not senate confirmed.

9           Q.       Was there an acting director?

10          A.       There was an acting director.

11          Q.       Was that Mr. McCament?

12          A.       No.

13          Q.       Who was it?

14          A.       Was Lori Scialabba.

15          Q.       At some point did McCament take over  
16 in that position as acting director?

17          A.       I believe, after Lori left, he  
18 became the acting director.

19          Q.       When was that, to the best of your  
20 recollection?

21          A.       Spring of 2017.

22          Q.       Was the prior director under the

1     Obama administration Leon Rodriguez?

2             A.       Yes.

3                     (Deposition Exhibit 135 was marked  
4     for identification.)

5                     BY MR. MEDOW:

6             Q.       Okay. Mr. Hamilton, you've been  
7     handed a copy of what's been marked as Exhibit  
8     135, which is a multi-page document entitled  
9     "Expert Report of Leon Rodriguez" in this  
10    lawsuit.

11                    Again, you're free to look at the  
12    doc -- any portion of the document you'd like.  
13    I'm going to direct your attention though to  
14    principally Paragraph 21.

15                    So why don't you give that and  
16    perhaps -- why don't you read 20 and 21. 20  
17    may give you some context for 21.

18             A.       Okay.

19             Q.       Let's look at 21. And I'll just  
20    read it for the record: "In making a  
21    recommendation to the DHS secretary regarding  
22    extension or termination of TPS, intervening

1 factors arising after a country's original TPS  
2 designation, such as subsequent natural  
3 disasters, issue of governance, housing,  
4 healthcare, poverty, crime, general security  
5 and other humanitarian considerations, were  
6 considered relevant to determining whether a  
7 country continued to meet the conditions for  
8 continuing TPS designation. This was true  
9 regardless of whether those intervening factors  
10 had any connection to the event that formed the  
11 basis for the original designation or to the  
12 country's recovery from that originating  
13 event."

14 Do you see where I've read?

15 A. I do.

16 Q. In your view, is Mr. Rodriguez's  
17 description of how he made recommendations to  
18 the secretary consistent with the language of  
19 the TPS statute?

20 MR. TYLER: Well, objection. It's  
21 vastly compound. It's a paragraph with much  
22 information in it. You're calling for a legal

1 conclusion. His personal view.

2 MR. MEDOW: I'm asking for his  
3 personal view.

4 THE WITNESS: I mean it certainly  
5 appears to be Director Rodriguez's belief.

6 BY MR. MEDOW:

7 Q. And I'm asking do you think his --  
8 his belief is consistent with the language of  
9 the statute, in your view -- the view you held  
10 as of January 20th --

11 MR. TYLER: I object.

12 BY MR. MEDOW:

13 Q. -- 2017?

14 MR. TYLER: It's an unfair question  
15 to the extent it is so vastly compound.

16 THE WITNESS: This is a very  
17 compound question.

18 There is at least eight factors  
19 listed there that they considered -- he lists,  
20 if not more. So I don't know. Some of those  
21 might be relevant, and some of them might not  
22 be.

1                   But it seems to be a very broad,  
2   self-serving statement.

3                   BY MR. MEDOW:

4           Q.       In -- in that paragraph we just  
5   read, Mr. Rodriguez, as you've just indicated,  
6   identified various factors he thought relevant  
7   to determining whether a country continued to  
8   meet the conditions for continuing TPS  
9   designation, correct?

10          A.       Yes. He seems to list a lot of  
11   factors.

12          Q.       Okay. Then let's look at the last  
13   sentence of the paragraph: "This was true,"  
14   meaning these factors were relevant,  
15   "regardless of whether those intervening  
16   factors had any connection to the event that  
17   formed the basis for the original designation  
18   or to the country's recovery from that  
19   originating event."

20                   Do you see that?

21          A.       I do see that.

22          Q.       Is that statement in that sentence

1 by Mr. Rodriguez consistent, in your view, with  
2 the language of the TPS statute?

3 MR. TYLER: Same objection. Vastly  
4 compound. Calls for legal conclusion.

5 THE WITNESS: This is -- I mean, as  
6 counsel just stated -- this says: "This was  
7 true," referring to the consideration of eight  
8 different factors, "regardless of whether those  
9 intervening factors had any connection to the  
10 event that formed the basis for the original  
11 designation or to the country's recovery from  
12 that originating event."

13 That is fairly vague. So maybe;  
14 maybe not.

15 BY MR. MEDOW:

16 Q. Maybe not what?

17 A. Could be consistent; could not be  
18 consistent. Just depends.

19 Q. Depends on what?

20 A. It depends on the specific facts and  
21 circumstances of every TPS designation and  
22 which one of the three subsections of the

1 statute under which TPS was designated.

2 Q. In your view, sir, is it  
3 appropriate, under the TPS statute, to consider  
4 intervening factors that were unrelated to the  
5 basis for the original designation or to the  
6 country's recovery from that originating event?

7 MR. TYLER: Objection. Calls for  
8 legal conclusion.

9 THE WITNESS: Could you repeat your  
10 question.

11 BY MR. MEDOW:

12 Q. Is it your view, sir, that it is  
13 appropriate, under the TPS statute, to consider  
14 intervening factors that were unrelated to the  
15 basis for the original designation or to the  
16 country's recovery from that originating  
17 events?

18 A. It could be; it could not be. It  
19 depends on the facts and circumstances.

20 Q. During the Trump administration, has  
21 the -- has the -- during the Trump  
22 administration, has D -- DHS considered

1 relevant intervening factors that were  
2 unrelated to the event that formed the basis  
3 for the original designation or to the  
4 country's recovery from that originating event?

5 MR. TYLER: Objection. Wide-open  
6 question. Vague.

7 THE WITNESS: For which TPS  
8 designation?

9 BY MR. MEDOW:

10 Q. Any.

11 A. Couldn't tell you.

12 Q. You don't know?

13 A. I mean I think so. I think, in some  
14 of them, it -- something was considered.  
15 Whether there's an intervening factor or not  
16 and which one of the intervening factors is  
17 a -- it's a very broad question.

18 Q. Are -- in making TPS determinations,  
19 are intervening factors unrelated to the basis  
20 for the original designation or to the  
21 country's recovery from that originating event  
22 relevant, in your view, to the decision?



1           A.       They -- they might be. They might  
2   not be. You have to do a very rigorous  
3   analysis of the specific facts and  
4   circumstances and the particular basis under  
5   which TPS was designated under the statute.

6                   (Deposition Exhibit 136 was marked  
7   for identification.)

8                   BY MR. MEDOW:

9           Q.       Okay. Mr. Hamilton, you've been  
10   handed what's been marked as Exhibit 136.

11                   These -- I'll represent to you that  
12   these are handwritten notes from Kathryn  
13   Anderson.

14                   Are you -- are you familiar with who  
15   she is?

16           A.       To my recollection, she works at  
17   USCIS.

18           Q.       Okay. And I'll represent to you  
19   that Ms. Anderson has testified these are her  
20   notes from an embargoed call meeting.

21                   Is that term familiar to you?

22           A.       An embargoed call meeting?

1 Q. Embargoed call, does that -- does  
2 that term have meaning to you?

3 A. It -- it could have meaning; could  
4 not. I mean depends on the context.

5 Are we talking about press or -- I  
6 mean --

7 Q. Yes.

8 A. -- I don't know what an embargoed  
9 call --

10 Q. Yes.

11 A. -- meeting --

12 Q. A -- a call with press. Embargoed I  
13 believe she explained that it was supposed to  
14 be not disclosed until a future point in time.

15 A. That is typically what -- yes. I'm  
16 familiar with that.

17 Q. Okay. Now, she also testified that  
18 you were present during the call reflected in  
19 these notes and that you spoke during it.

20 A. Okay.

21 Q. This is in May of 2017.

22 And look -- I'm looking on the first

1 page.

2 Do you see the -- looks like the  
3 third bullet item, "Congress asked"?

4 A. Okay.

5 Q. And I will read to you -- she  
6 read -- because it's her handwriting. She read  
7 it into the record, and I'll just read it to  
8 you so you have it.

9 This is on Page 297 of Anderson's  
10 transcript in this case. She read her  
11 handwriting to read: "Congress asked us to  
12 look at conditions that led to initial  
13 designations and not at other conditions.  
14 Understand some fine lines to draw there."

15 That's how she read it.

16 Were these -- was -- was this a  
17 statement you made during this call?

18 A. I -- I don't know if that was a  
19 statement I made. I don't recall.

20 Q. Do you agree with those statements?

21 A. Do I agree with her...

22 Q. What she wrote down there.

1           A.       It depends.

2           Q.       On?

3           A.       The specific subsection under which  
4   TPS was designated.

5           Q.       How does the specific subsection  
6   play into the analysis?

7           A.       Well, you have to look at the  
8   wording of the subsection.  There's -- TPS can  
9   be designated for periods of ongoing armed  
10   conflict; natural disasters, generally  
11   speaking; or extraordinary or temporary  
12   conditions are the three general prongs.

13                  Each one has specific language that  
14   you have to follow.

15          Q.       Okay.  Focusing on that last prong,  
16   the temporary and extraordinary conditions  
17   prong, is her -- do you agree with the  
18   statement Ms. Anderson wrote down in connection  
19   with those designations?

20          A.       It depends on if she's saying that  
21   just in general or she's saying that in terms  
22   of an extension or a redesignation or

1 specifically what she's referring to.

2 Q. Directing your attention in the same  
3 Exhibit 136 to a page Bates stamped Anderson  
4 10.

5 Do you see that?

6 A. I do.

7 Q. Okay. I'm looking -- there's a --  
8 some handwriting. Then there's a blank line.  
9 Then handwriting continues "Does S1."

10 Do you see that?

11 A. I do.

12 Q. Okay. She has testified S1 refers  
13 to the secretary. So assuming this is in the  
14 May 2000 [sic] time period, that would be  
15 Kelly.

16 Was that common at DHS to refer to  
17 the secretary as S1?

18 A. Yes.

19 Q. She writes: "Does S1 for  
20 administration have concerns about TPS program  
21 as a whole? Short answer, yes. S1 is looking  
22 at program with fresh eyes and wants to ensure

1 all programs administered in a way that  
2 benefits national interest."

3 Are these statements you made during  
4 this call?

5 A. I don't know.

6 Q. Do you recall who -- who did make  
7 them, if not you?

8 A. I don't -- I don't know who else was  
9 on that call, if I said this. I mean this is  
10 her handwritten notes that you're representing  
11 was from a call from May of 2017, nearly two  
12 years ago. I couldn't tell you.

13 Q. As of May of 2 -- 2017, did the  
14 administration have concerns about the TPS  
15 program as a whole?

16 A. What do you mean by "the  
17 administration"?

18 Q. Trump administration.

19 A. What do you mean by the "Trump  
20 administration"?

21 Q. Persons in the Trump administration.

22 A. I don't -- can't represent to you

1 the views of every person in the Trump  
2 administration.

3 Q. Do you know of any people in the  
4 Trump administration who, as of May of 2017,  
5 had concerns about the TPS program as a whole?

6 MR. TYLER: Objection. Wide open.

7 THE WITNESS: I -- do I know any  
8 single person who had concerns with the TPS  
9 program as a whole?

10 MR. MEDOW: Yes.

11 THE WITNESS: I don't know that  
12 anyone had concerns about the program as a  
13 whole. They -- people may have had feelings  
14 about individual designations and whether the  
15 conditions were met under the statute for  
16 continued designation extension or  
17 redesignation.

18 I -- it's pretty wide open.

19 BY MR. MEDOW:

20 Q. At any point in time, did Mr.  
21 Miller, Stephen Miller, express to you his  
22 views on TPS?

1 MR. TYLER: At any time.

2 MR. MEDOW: At any time.

3 THE WITNESS: At any time in  
4 history, has Stephen Miller represented his  
5 views on TPS to me.

6 MR. MEDOW: Yes.

7 MR. TYLER: Well, it -- it's when he  
8 was in government, Mr. Hamilton was in  
9 government.

10 MR. MEDOW: Let's --

11 MR. TYLER: Then it comes squarely  
12 within the deliberative process privilege.

13 BY MR. MEDOW:

14 Q. Let -- let's take it step by -- just  
15 -- I think it's just a yes-or-no question at  
16 this point. And then we can break it down and  
17 see what time periods we are talking about.

18 A. I don't recall him expressing his  
19 personal views on TPS to me.

20 Q. At any point in time.

21 A. I don't recall him expressing his  
22 personal views about INA Section 244



1 individually to me.

2 Q. Do you know who James Nealon is?

3 A. I do.

4 Q. Who is that?

5 A. He was the assistant secretary for  
6 international affairs at DHS.

7 Q. He has testified not in this case  
8 but in the Ramos case in California. In his  
9 deposition on August 22nd of 2018 at Page 292,  
10 lines 22 to 24, he testified: "So I recall Mr.  
11 Hamilton on a couple of occasions saying that  
12 Mr. Miller favored the termination of TPS."

13 Did you, in fact, say that on  
14 occasion?

15 A. I don't know.

16 Q. Did Mr. Miller, in fact, say to you  
17 that he favored the termination of TPS?

18 A. I dont recall Stephen saying that he  
19 favored the termination of TPS.

20 Q. Are you saying he didn't say it or  
21 you don't remember?

22 A. I don't -- I don't remember.

1 (Deposition Exhibit 137 was marked  
2 for identification.)

3 BY MR. MEDOW:

4 Q. Mr. Hamilton, you've been handed by  
5 the reporter what's been marked as Exhibit 137.

6 It appears to be a January 12th,  
7 2016 letter from Senator Sessions and  
8 Congressman Brat, B-R-A-T, to "Dear Republica  
9 Colleague" and attaching a -- an article by the  
10 two individuals in roll call.

11 Have you ever seen either the letter  
12 or the article previously?

13 A. I don't remember.

14 Q. Did you -- you worked for Senator  
15 Sessions in January '16, right?

16 A. I did.

17 Q. Did you draft or assist in drafting  
18 either the letter or the article?

19 A. I don't remember.

20 Q. Would that -- would you have been  
21 the -- to the extent any staffer assisted him  
22 on these subjects, would you have been the

1 person?

2 A. Sometimes; sometimes not. It  
3 depends.

4 Q. Who else would have dealt with --  
5 you can, again, look at wherever you want in  
6 the document, but I'll represent to you it all  
7 deals with immigration issues.

8 A. Okay.

9 Q. Were there others who the senator  
10 relied on at this time period to assist in  
11 drafting materials on immigration?

12 A. There is other staff members in the  
13 office. And certainly outward facing things  
14 could have come from the press shop, or they  
15 could have come from committee staff. I --  
16 there's a number of folks who advise members of  
17 congress.

18 Q. Let me -- let me direct your  
19 attention to specific --

20 A. Okay.

21 Q. -- portions, see if it jogs your  
22 recollection at all.

1 I'm looking in the roll call  
2 article --

3 A. Okay.

4 Q. -- second page. And there's a --  
5 towards the middle there's a paragraph, the --  
6 starts: "Following the 1880 to 1920  
7 immigration wave."

8 Do you see that?

9 A. I do.

10 Q. Let me just read for the record:  
11 "Following the 1880 to 1920 immigration wave,  
12 which saw the foreign-born population double  
13 from 7 million to 14 million people, congress  
14 passed the law to reduce future immigration.  
15 Between 1920 and 1970, America's foreign-born  
16 population shrank from 14 million to  
17 9.6 million. For half a century the number of  
18 immigrants declined both in total number and as  
19 a share of the population."

20 New paragraph: "This period  
21 witnessed rapid wage growth."

22 New -- new paragraph: "According to

1 the Congressional Research Service, from 1945  
2 to 1970, as the foreign-born population fell,  
3 the bottom 90 percent of wage earners saw an  
4 82.5 percent increase in their wages. During  
5 this time, millions of prior immigrants were  
6 able to" curb -- I'm sorry -- "able to climb  
7 out of the tenements and into the middle  
8 class."

9 New Paragraph: "In 1965 congress  
10 passed a new immigration law which helped  
11 produce an unprecedented wave of low-skilled  
12 immigration. The foreign-born population more  
13 than quadrupled from fewer to 10 million in  
14 1970to more than 42 million today. In 1970  
15 fewer than 1 in 21 residents were foreign-born.  
16 Today it is approaching 1 in 7. In cities such  
17 as Los Angeles and New York, almost 4 in 10  
18 current residents were born in another country.  
19 One-fifth of our residents now speak a language  
20 other than English at home. One-quarter of our  
21 residents is now either an immigrant or born to  
22 immigrant parents."

1                   My -- does my reading that refresh  
2   your recollection as to any involvement you had  
3   in putting together this article?

4           A.       No.

5           Q.       Included within the foreign-born  
6   population in the country would be TPS  
7   beneficiaries, correct?

8                   MR. TYLER: Oh, objection. This  
9   goes -- this -- your question spans multiple  
10   paragraphs, a broad recitation of facts having  
11   nothing to do with TPS on its face. It's  
12   grossly unfair.

13                  MR. MEDOW: You're not listening to  
14   the question.

15                  BY MR. MEDOW:

16           Q.       The question is simply does the  
17   foreign-born population in the U.S. include TPS  
18   beneficiaries?

19           A.       I don't know specifically what the  
20   Congressional Research Service survey that's  
21   referenced in this article looked at.  
22   Presumably it could include TPS holders. But

1 again, that would require me to look at that  
2 specific study, to look at the underlying data  
3 that they relied upon, and then make a judgment  
4 from there.

5 I have no idea what this has to do  
6 with TPS.

7 Q. Was it your view, as of January  
8 20th, 2017, that the number of foreign-born  
9 individuals in the United States was too high?

10 MR. TYLER: Objection. This is  
11 becoming argumentative. It's irrelevant. It's  
12 harassing. It's outside the scope of relevance  
13 under Rule 26.

14 Counsel, you have some leeway. But  
15 this is a mystery where you're trying to go  
16 with this, other than to get into perhaps a  
17 philosophical debate with this witness on broad  
18 immigration matters having no bearing upon this  
19 case.

20 MR. MEDOW: The question stands.

21 THE WITNESS: Your question seems to  
22 be intended to annoy or harass me as a witness.

1 And I think it is a patently absurd that you  
2 would waste your limited time on deposition  
3 asking that question.

4 BY MR. MEDOW:

5 Q. The question is, as of January 20th,  
6 2017, did you believe the number of  
7 foreign-born individuals in the United States  
8 was too high?

9 MR. TYLER: This is objectionable.  
10 It's unfair. It's harassing. It's  
11 argumentative. It's way beyond the scope of  
12 appropriate discovery. I object.

13 THE WITNESS: I think that your  
14 question -- I will repeat my comment. I don't  
15 know what you're getting at. This is the  
16 biggest waste of time in history. The answer  
17 to your question is no.

18 And if you want to keep bringing  
19 ridiculous questions like that, then I'm going  
20 to keep raising the fact that this appears to  
21 not be intended to get any relevant evidence  
22 whatsoever.



1 MR. MEDOW: Move to strike the  
2 witness's superfluous comment?

3 MR. TYLER: It stays in. It's not  
4 superfluous at all. It's -- it's appropriate  
5 comment to really objectionable line of  
6 questioning. You should know better.

7 THE WITNESS: I mean what you're  
8 insinuating is that --

9 MR. MEDOW: I'm not going to debate  
10 this.

11 THE WITNESS: -- I have some kind of  
12 problem.

13 MR. TYLER: Well, then -- then  
14 don't -- don't engage in this kind of inquiry.

15 MR. MEDOW: I'll engage in whatever  
16 inquiry --

17 MR. TYLER: No. Actually --

18 MR. MEDOW: -- I deem appropriate.

19 MR. TYLER: Actually, the results  
20 of -- of the civil procedure also apply to this  
21 deposition.

22 MR. MEDOW: I'm well aware of that.

1 MR. TYLER: And you are -- you are  
2 engaging in violation of Rule 26(c). You are  
3 harassing this witness for no good cause other  
4 than to get into argument with him on matters  
5 that have no bearing upon the specific  
6 matters --

7 MR. MEDOW: In your --

8 MR. TYLER: -- before the court.

9 MR. MEDOW: In your view.

10 MR. TYLER: In any objective view.

11 THE WITNESS: Counsel --

12 MR. MEDOW: That's --

13 THE WITNESS: -- I mean this -- this  
14 is the biggest waste of time, asking me about  
15 an article citing some survey from the  
16 Congressional Research Service about the  
17 foreign-born population and trying to tie it to  
18 a TPS decision.

19 You know, if you want to keep doing  
20 this, that's great. But I'm just telling you  
21 you are wasting your time, and you're trying to  
22 harass me. And I don't appreciate it.

1 MR. MEDOW: I'm not trying to harass  
2 you, sir.

3 And I move to strike your comments.  
4 Let's take a break.

5 THE VIDEOGRAPHER: We are going off  
6 the record.

7 The time is 11:30 a.m.

8 (A short recess was taken.)

9 THE VIDEOGRAPHER: We are back on  
10 the record.

11 The time is 11:43 a.m.

12 BY MR. MEDOW:

13 Q. Mr. Hamilton, I just want to clean  
14 up a point from what we were talking about  
15 previously. And again, I'll just like to read  
16 you a short snippet from your testimony --

17 A. Okay.

18 Q. -- from the DACA case and just see  
19 if you're -- you stand by the testimony you  
20 gave.

21 A. Okay.

22 Q. It's Page 156, lines 8 through 11.

1                   Question: "Would you agree that,  
2   during that time" -- I guess I ought to read a  
3   little bit before that so you know what "that  
4   time" is. I'll just start at the top of 156,  
5   Line 1.

6                   Question: "Okay. I would like to  
7   talk with you a bit more about your role in the  
8   secretary's office. And I know you previously  
9   testified that you served in the office of the  
10   secretary for DHS for essentially the entire  
11   Trump administration; is that correct?"

12                  Answer: "That's correct."

13                  Which it was correct as of that  
14   point in time, correct?

15                  A.     Yes. As of October, there was only  
16   one place I worked.

17                  MR. TYLER: Counsel, are you going  
18   to introduce this testimony into the record,  
19   the -- this -- the deposition transcript?

20                  MR. MEDOW: I -- I can mark it if  
21   you'd like.

22                  MR. TYLER: Yeah. It might be more

1 fair to the witness.

2 MR. MEDOW: I was just trying to --

3 MR. TYLER: I understand.

4 MR. MEDOW: -- avoid paper, but --

5 MR. TYLER: Yeah. I understand.

6 MR. MEDOW: -- purposely.

7 We brought copies, so --

8 MR. TYLER: I understand.

9 MR. MEDOW: -- they're yours.

10 (Deposition Exhibit 138 was marked  
11 for identification.)

12 MR. TYLER: And the pages you're  
13 referring to?

14 MR. MEDOW: I was referring to 156.

15 BY MR. MEDOW:

16 Q. Okay. Do you see where I just  
17 previously read, lines 1 through 7 on 156?

18 A. Yes.

19 Q. Okay. So the time frame talked --  
20 being talked about was the Trump  
21 administration.

22 Do you see that?

1 A. I do.

2 Q. Okay. Then Line 8: "Would you  
3 agree that, during that time, the office of the  
4 secretary has changed existing administration  
5 policies on immigration?"

6 Answer: "Yes."

7 Do you see that?

8 A. I do.

9 Q. Was that the testimony you gave in  
10 the deposition?

11 A. It appears to be what was recorded.

12 Q. Have you any basis to challenge the  
13 transcription?

14 A. No. I don't think so.

15 Q. Do you stand by that testimony?

16 MR. TYLER: Objection. Vague.

17 THE WITNESS: What -- which -- which  
18 part of which testimony?

19 BY MR. MEDOW:

20 Q. Lines -- the question and answer in  
21 lines 8 through 11.

22 A. Yeah.

1 Q. Okay. Thank you.

2 Okay. Let -- let me -- I'd like to  
3 talk on a more general level about your role  
4 with TPS determinations --

5 A. Okay.

6 Q. -- to give you a little sense of  
7 where we're heading.

8 Now, I think we talked about earlier  
9 there would be a recommendation that would come  
10 out of USCIS and go up to the secretary,  
11 correct?

12 A. That -- we talked about that. And  
13 that sounds vaguely -- my recollection seems to  
14 be that that was the case.

15 Q. And the -- would the recommendation  
16 from USCIS be in the form of a decision memo  
17 with blanks for the secretary to indicate what  
18 he or she decided to do: terminate, extend, et  
19 cetera?

20 A. I think there were decision memos on  
21 this. There's a multitude of meetings and  
22 things that occurred leading to any TPS

1 decisions. There wasn't one singular  
2 recommendation memo that happened in a vacuum  
3 without further information.

4 Q. I understand that. I'm just -- I'm  
5 focusing just right now on the paper trial and  
6 to find out your involvement.

7 A. Okay.

8 Q. To the extent there were these  
9 decision memos that came up from USCIS to the  
10 secretary, would you review them?

11 A. I don't have any specific  
12 recollection. But I think, generally, yes.

13 Q. Would you advise the secretary --  
14 well, would you advise the secretary generally  
15 on the decision, as TPS issues arose, as to  
16 what the secretary should do?

17 A. I would provide counsel and advice  
18 to the secretary.

19 Q. Would you share that counsel and  
20 advice in writing? orally? how?

21 A. It depends. Usually orally. And we  
22 worked very closely together. So...



1 Q. Did you deal on a daily basis with  
2 the secretary?

3 A. Absolutely.

4 Q. Were your offices next-door to each  
5 other or close?

6 A. They were close.

7 Q. Is that -- was most of your  
8 communication with the secretary then orally as  
9 opposed to in writing?

10 A. I think so.

11 Q. Now, once a decision was made on a  
12 TPS country decision, the decision would be  
13 publicly announced, right?

14 A. Yes. The process typically was to  
15 announce a decision and publish something on  
16 the Federal Register, to the best of my  
17 recollection.

18 Q. Would there typically be both a  
19 press release put out and then a notice in the  
20 Federal Register?

21 A. I don't recall specifically. That  
22 sounds -- that sounds right.

1           Q.       What role, if any, did you have in  
2       the preparation or the finalization of either  
3       press releases or Federal Register notices?

4           A.       I would, on a variety of documents,  
5       and I would assume including those documents  
6       you described, provide, you know, any edits for  
7       consistency or whatever consistent with  
8       direction from the secretary.

9           Q.       Would the secretary want you to  
10      review and approve either the press release or  
11      the Federal Register notice before it went out?

12          A.       Typically I would -- I don't -- I  
13      don't know if I can recall a specific instance  
14      of the secretary asking me directly, "Please  
15      approve this press release." But it was just  
16      assumed that was part of my job.

17          Q.       Same with the Federal Register  
18      notice?

19          A.       A visibility onto it for the  
20      secretary to ensure that it was consistent with  
21      what the secretary wanted.

22          Q.       When you say "visibility," what do

1     you mean?

2           A.       I would see the documents. And if I  
3     -- they needed to be edited, I'd have an  
4     opportunity to edit. If not, then I wouldn't.

5           Q.       And if you saw a problem, you'd  
6     speak up, I assume?

7           A.       To the best of my ability. But  
8     during that time, we were working on a lot of  
9     different things. And so it could be that  
10    sometimes maybe I didn't have the ability to --  
11    to edit something that needed to be edited.

12          Q.       Okay. Did you work with USCIS on  
13    the preparation of its recommendation or  
14    decision memo?

15          A.       I -- I think I might have. But  
16    again, this was an iterative process that  
17    involved multiple meetings and memos. And I --  
18    I -- I don't remember specifically at what  
19    point in time I came in or where I didn't.

20          Q.       Would you typically review drafts of  
21    the USCIS decision memo before it'd be sent up  
22    to the secretary?

1           A.       I think sometimes I -- I might have  
2    seen drafts of memos. But I -- I have no  
3    specific recollection.

4           Q.       Okay. When you did, you would  
5    review and comment, I assume?

6           A.       Sometimes, I think. Just -- again,  
7    it really depends on the -- on the context and  
8    on the situation.

9           Q.       Now, would the decision memo  
10   typically be proceeded by another document  
11   generated within USCIS describing in greater  
12   detail conditions in the relevant country?

13          A.       That sounds right. But I don't have  
14   a specific recollection.

15          Q.       Country condition memo, does that  
16   have any --

17          A.       I -- I can --

18          Q.       -- resonance?

19          A.       What I can tell you is that I can  
20   recall, whether it was a USCIS document or  
21   whether it was something else, country  
22   condition were evaluated, and they were part of

1 the decision in making a TPS decision.

2 Q. Did you have any role in USCIS's  
3 evaluation of country conditions?

4 A. I -- did I have any role?  
5 What do you mean by that?

6 Q. Did you participate in the process  
7 by which USCIS generated its conclusions  
8 regarding country conditions?

9 A. I don't recall specifically. I -- I  
10 know that we -- I discussed that issue with  
11 USCIS. But I -- I don't have any specific  
12 recollection.

13 Q. In terms of the -- and again, we're  
14 -- the focus here is on an ultimate decision  
15 with regard to a specific country under TPS.

16 Would you -- and we've talked now  
17 about some of your interactions with various  
18 persons within DHS in that process.

19 Did you deal with people outside of  
20 DHS in connection with the consideration of how  
21 to treat individual countries?

22 A. I -- again, it's been a while. I

1 think so. I -- my recollection is that, as  
2 part of my duties advising the secretary, I  
3 would consult with anyone that was necessary to  
4 make the decision.

5 Q. Okay. Specifically do you recall  
6 consulting with White House staff?

7 MR. TYLER: Objection. Vague.

8 BY MR. MEDOW:

9 Q. With -- with respect to specific  
10 country decisions.

11 A. Which decision?

12 Q. Whether to extend, terminate,  
13 redesignate --

14 A. For which country?

15 Q. Any county. Just a general -- just  
16 trying to get a general sense right now. And  
17 then we'll dive down to see if there's anything  
18 relevant to Haiti.

19 A. I think that there was -- there had  
20 to have been interaction of some kind.

21 Q. Who -- can you put any names on that  
22 in terms of who on the White House staff you

1 would have dealt with in connection with  
2 individual country decisions?

3 A. I -- I don't recall. I know that  
4 there was -- on -- and again, it's been so  
5 long, and there's so many of these decisions, I  
6 don't remember if NSC was involved in some of  
7 these or DPC. I think maybe both may have had  
8 some involvement.

9 But I -- I just don't -- I don't  
10 want to tell you wrong.

11 Q. Let's just make sure we understand  
12 the acronym.

13 NSC is National Security Council?

14 A. That's correct.

15 Q. And did you say DPC?

16 A. That's correct.

17 Q. That's Domestic Policy Council?

18 A. Yes.

19 Q. Did you attend meetings hosted by  
20 DPC related to immigration?

21 A. Did I attend meetings hosted by DPC.

22 At -- I'm certain that DPC was present at

1 meetings that I attended that involved  
2 immigration.

3 Q. Okay. You can check me, but on  
4 pages -- I used that phrasing because that's  
5 what you said on pages 184 and 185, that --

6 A. Okay.

7 Q. -- you attended meetings hosted by  
8 DPC.

9 Does that refresh your recollection?

10 Again, if you want to look at the  
11 testimony, go ahead.

12 A. I suppose they were hosted. I  
13 just -- again, you know, that was closer to  
14 time than it is now. So I -- if they hosted or  
15 they were just there. I...

16 Q. In meet -- in meetings with DP -- do  
17 you recall meetings with DPC regarding -- or  
18 where one subject, at least, was an individual  
19 country determination under TPS?

20 A. Not any meetings, no.

21 Q. Any communications with DPS  
22 members -- or DPC members?



1                   Excuse me.

2           A.       There -- there may have been on a  
3 couple of them. I...

4           Q.       Did DPC report to Mr. Miller?

5           A.       I don't know that they report to  
6 Stephen. DPC is headed by Andrew Bremberg,  
7 who's the director of the Domestic Policy  
8 Council. It has a deputy director. I believe  
9 Stephen has some oversight of it but -- but not  
10 a direct reporting type of relationship.

11          Q.       You testified in the DACA case, 180  
12 -- Page 186, lines 17 to 19: "Domestic Policy  
13 Council technically reports to Stephen Miller."

14                   What did you mean by that?

15          A.       I think it was the same kind of  
16 description that I have now. I don't know  
17 about technically reporting or if it's -- it's  
18 hard to describe. Because no one has been  
19 exactly clear on what that relationship is.  
20 And there's not like an org chart that shows,  
21 you know, that Stephen supervises their work or  
22 if they -- if he just has oversight of it.

1           It depends on -- I don't -- I don't  
2   know specifically. But he has some involvement  
3   with the Domestic Policy Council.

4           Q.     Okay. Do you recall any discussions  
5   with Mr. Miller about individual country TPS  
6   decisions?

7           A.     I know that I had to have had, at  
8   some point, individual discussions with Stephen  
9   about general updates so that he could inform  
10  the president about individual TPS decisions.

11          Q.     So the -- the -- the updates would  
12  be provided by you to Miller?

13          A.     Yes. That's correct.

14          Q.     And that -- that would include where  
15  the department was going on individual country  
16  decisions?

17          A.     Where the department was going, I  
18  don't know specifically. I know that I  
19  discussed. I don't know what -- at what point  
20  it was, if it was predecision, after decision.  
21  I -- I just don't recall.

22          Q.     Do you recall any discussions with

1 Mr. Miller regarding any TPS decisions relating  
2 the Haiti?

3 A. Not specifically to Haiti; although,  
4 as part of a -- my duties, I generally would  
5 have probably kept him updated.

6 Q. Did you have discussions with Steve  
7 Bannon when he was in the White House?

8 A. Did I have discussions with Steve  
9 Bannon when he was in the White House? I think  
10 so.

11 Q. Did any of those discussions touch  
12 on TPS?

13 A. Not to the best of my recollection.

14 Q. And just to close it out, do you  
15 recall any discussions with Mr. Bannon about  
16 individual country decisions by DHS relating to  
17 TPS?

18 A. No.

19 Q. Were there -- did you have any  
20 discussions -- and again, focusing when you  
21 were at DHS.

22 A. Okay.

1           Q.       Did you, in that time period, had --  
2   have any discussions with Sen -- well, then  
3   Attorney General Sessions regarding individual  
4   country decisions on TPS?

5           A.       When I was at DHS --

6           Q.       Correct.

7           A.       -- if I had discussions with  
8   Sessions about individual TPS decisions.

9           Q.       Correct.

10          A.       I don't think so.

11          Q.       Okay. Do you remember specifically  
12   anything said between the two of you on Haiti?

13          A.       I don't.

14          Q.       Now, you -- you testified in -- in  
15   your prior deposition that you've been in  
16   meetings with the president.

17                   Do you recall that?

18          A.       Yes.

19          Q.       Approximately how many?

20          A.       I don't know. Somewhere between  
21   five and ten.

22          Q.       Are these one-on-one meetings, or

1 are you there part of a --

2 A. No.

3 Q. -- larger group?

4 A. I'm there as part of a larger group.

5 Q. Is there a -- a routine or recurring  
6 type of meeting that brings you into contact  
7 with the president?

8 A. A -- what -- what do you mean by  
9 like a -- a routine type of...

10 Q. Of out -- of -- of your five to ten  
11 meetings, are they all of one type? are they  
12 all different types of meetings?

13 I'm just trying to get a sense of  
14 it.

15 A. I think they've always kind of  
16 varied. It's been from -- could be -- involve  
17 substance of issues of import to the president.  
18 And sometimes it's been things like, you know,  
19 the new chief of staff getting sworn in.

20 You know, there's just a variety of  
21 meetings that I've attended, whether it's -- I  
22 don't know -- a bill signing, executive order

1 signing.

2 I've been around the president  
3 probably five to ten times.

4 Q. Have you personally communicated  
5 with the president?

6 A. I have spoken with the president.

7 Q. Small talk, substance, or what?

8 A. Mostly small talk.

9 Q. Do you recall any substance --  
10 substantive discussions between you and the  
11 president on immigration issues?

12 A. Not that I -- not that I can think  
13 of.

14 Q. Do you recall specifically any  
15 discussions with -- or let me rephrase.

16 Do you recall any discussions with  
17 the president in your presence relating to TPS?

18 A. No.

19 Q. Do you recall any discussions in  
20 your presence -- let me rephrase.

21 Do you recall any discussions that  
22 you've personally observed with the president

1 relating the Haiti?

2 A. No.

3 Q. And just make it absolutely clear,  
4 were you present at any time when there was a  
5 discussion with the president regarding Haiti's  
6 status under TPS?

7 A. No.

8 Q. Did -- while you were at DHS and  
9 individual countries were under consideration  
10 with respect to their TPS status, did you  
11 receive input from people outside of the  
12 government?

13 A. Outside of the government?

14 Q. Yes.

15 MR. TYLER: Objection. Vague.

16 THE WITNESS: If you could offer  
17 some more explanation of what --

18 BY MR. MEDOW:

19 Q. Well, I'm just -- anybody outside of  
20 the government.

21 If -- if the answer is "yes," then  
22 the next question will --

1 A. Outside --

2 Q. -- be who?

3 A. Outside of the United States

4 Government, yes.

5 Q. Who?

6 A. Government of Haiti, for example.

7 Q. Okay. Well, let's -- let's focus  
8 specifically on Haiti.

9 In connection with the decisions on  
10 Haiti, to whom -- or from whom did you receive  
11 input on those decisions outside of the  
12 government?

13 You mentioned the government of  
14 Haiti.

15 Anyone else?

16 Any other third parties, if you  
17 will, who weighed in on the decision?

18 A. I mean weighing in on the decision,  
19 there were a variety of advocacy groups and  
20 members of congress who expressed an interest.  
21 I couldn't tell you who they were specifically  
22 or which organizations they were and -- or, you



1 know, who they contacted.

2 And it -- there's a lot of people  
3 who write letters to the secretary. Sometimes  
4 I see them. Most of the times I would see  
5 them. Occasionally one might slip by that I  
6 don't.

7 But generally speaking, that was the  
8 universe.

9 Q. Do you -- do you recall any  
10 face-to-face meetings -- start with that --  
11 face-to-face meetings with people outside of  
12 government relating to the Haiti TPS decision?

13 A. Yes. We met with the Haitian  
14 government several times.

15 Q. Who else, if anyone?

16 A. I don't recall any other specific  
17 meetings, other than there may have been a  
18 briefing or two with congress where members of  
19 congress on the -- the then minority side may  
20 have raised issue as a question. But I -- I  
21 don't recall specifically.

22 Q. The then major -- minority would be

1 the democrats?

2 A. That correct.

3 Q. Now, you -- as we established, you  
4 left DHS October 27th, I think was the most  
5 precise --

6 A. Yes.

7 Q. -- date you gave.

8 After October 27th of 2017, did you  
9 have any continuing role with respect to TPS  
10 decisions by DHS?

11 A. Not with respect to decisions by  
12 TPS. But I did have a role in advising the  
13 attorney general on immigration matters  
14 generally.

15 Q. And to do that, did you try to keep  
16 in touch with DHS to see what was happening on  
17 various country decisions?

18 A. Sometimes I think so.

19 Q. To the extent you wanted to get  
20 information from DHS regarding how it was  
21 dealing with individual country determinations,  
22 who would you talk to or communicate with?

1           A.       It depends.  It's -- could be  
2     the chief of staff.  Could be general counsel's  
3     office.  Could be the director of USCIS.  Any  
4     number of people.  Whoever -- whoever --  
5     whatever it takes to get an answer for my boss.

6           Q.       Okay.  Are those the most likely  
7     candidates:  chief of staff --

8           A.       I think so.

9           Q.       -- general counsel and director of  
10    USCIS?

11          A.       Most likely.  Maybe the head of the  
12    office of policy.

13          Q.       That'd be Ms. Nuebel Kovarik?

14          A.       No.  The DHS office of policy.  I  
15    mean I -- I may have asked Kathy.  I don't  
16    recall.

17          Q.       Who was the head of the office of  
18    policy?

19          A.       Well, at the time -- well, it  
20    depends on which time we're talking about.  For  
21    some time, I think summer of 2017, it was Jim  
22    Nealon who was performing the duties of the

1 undersecretary for policy.

2 And after he left, I don't -- I  
3 don't remember who took over then. And then  
4 now it's James McCament. But it depends on the  
5 time period in question.

6 Q. Now, once the Trump administration  
7 began in January of 2017 and following  
8 thereafter, was the first decision to be made  
9 on TPS related to Haiti?

10 A. I think so.

11 Q. What is your understanding of the  
12 circumstances that prompted the original  
13 designation of Haiti under TPS?

14 A. There was an earthquake.

15 Q. In what year?

16 A. 2010, I think.

17 Q. As of January 20th of 2017, is it  
18 true that Haiti's initial designation had been  
19 extended several times?

20 A. It had been, yes, extended several  
21 times.

22 Q. Do you recall when the last

1 extension was through, what date?

2 A. I don't -- I don't recall. I know  
3 that the extensions tend to be for 18 months.  
4 So it would have been 18 months prior to  
5 whatever it was coming up. I don't remember.

6 (Deposition Exhibit 139 was marked  
7 for identification.)

8 BY MR. MEDOW:

9 Q. Okay. Mr. Hamilton, you've now been  
10 handed what's been marked as Exhibit 139, which  
11 I see we didn't have to mark because it was  
12 previously marked, but such is life.

13 Do you recognize this to be the -- a  
14 Federal Register notice?

15 A. It appears to be a Federal Register  
16 notice.

17 Q. And looks like the date is August  
18 25th, 2015?

19 A. Yep.

20 Q. And do you see in the first  
21 paragraph on the first page it indicates that,  
22 as of that date, the secretary had extended the

1 designation of Haiti for TPS for 18 months  
2 through July 22nd of 2017?

3 Do you see that?

4 A. That's what it says.

5 Q. And does that -- does that jibe with  
6 your recollection as to when the Haiti  
7 designation was coming up for decision?

8 A. Seems right.

9 Q. Okay. Now, is it true under the  
10 statute that the secretary is to decide within  
11 60 days before the termination date?

12 A. I think so.

13 Q. And is it your understanding that,  
14 if there's no decision by the secretary, there  
15 is an automatic extension?

16 A. Yes.

17 Q. So if you work back from the July  
18 date, that would put the 60-day trigger in  
19 basically late May of 2017?

20 A. Seems right.

21 Q. Now, does that jibe -- again, jibe  
22 with your recollection that that's when the

1 decision point was first time on Haiti?

2 A. Yeah.

3 MR. MEDOW: Okay. Let's move to --

4 (Deposition Exhibit 140 was marked  
5 for identification.)

6 BY MR. MEDOW:

7 Q. Okay. You should now have Exhibit  
8 140.

9 Mr. Hamilton, do you recognize this  
10 as another Federal Register notice?

11 A. Sure looks like one.

12 Q. And does this, again, relate to the  
13 decision -- or a decision by DHS regarding  
14 Haiti's status under TPS?

15 A. It looks that way.

16 Q. This is a registered notice dated  
17 May 24th of 2017?

18 A. That's what it says.

19 Q. Okay. So is this the notice then  
20 reflecting what the agency's decision was on  
21 Haiti in advance of the termination of the --

22 A. I think yeah.

1 Q. -- of the -- of the prior extension?

2 A. Seems -- seems to be the one you  
3 describe.

4 Q. Okay. Did you -- what role, if any,  
5 did you have in the preparation of this Federal  
6 Register notice, Exhibit 140?

7 A. I have no specific recollection;  
8 although, as I've testified earlier, I -- I  
9 probably edited the document. I -- I don't  
10 specifically remember.

11 Q. Okay. And let's look briefly at the  
12 section of the notice that starts on the second  
13 page of the exhibit and continues on to the  
14 third.

15 A. Okay.

16 Q. I am looking at the third column,  
17 farthest right column.

18 Do you see the heading "Why is the  
19 Secretary Extending the TPS Designation For  
20 Haiti through January 22, 2018"?

21 A. I see it.

22 Q. Okay. At -- why don't you take a



1 minute to review that section. I think it --  
2 it continues to the end of the second page and  
3 the first two columns of the third.

4 A. Okay.

5 Q. You've had an opportunity to review  
6 that portion?

7 A. I did.

8 Q. Does this section discuss actual  
9 conditions in Haiti as of the date of the  
10 notice?

11 A. It seems to describe things that  
12 have happened since the last designation.

13 Q. Up through the May 24th, 2017 date?

14 A. It -- it -- I think it could  
15 generally be characterized as doing so.

16 Q. And looking at the second paragraph  
17 of -- of this section -- so that would be the  
18 first paragraph on Page 3 --

19 A. Okay.

20 Q. -- do you see that that paragraph  
21 addresses, among other things, issues specific  
22 to the earthquake?

1 Do you see that?

2 A. Yes.

3 Q. Then if -- the -- the paragraph  
4 after that then discusses the impact of  
5 Hurricane Matthew, which made landfall in Haiti  
6 in October of 2016, correct?

7 A. I see it. It says that.

8 Q. And then the following paragraph,  
9 does it discuss the impact of heavy rains  
10 approximately six months later in April of  
11 2017?

12 A. That's what it looks like.

13 Q. And then the next paragraph, does  
14 that discuss Haiti's -- what it refers to as  
15 weak system -- public health system, including  
16 the lingering impact of a cholera epidemic?

17 A. Those are the words.

18 Q. Okay. Then the next paragraph says  
19 "Based upon this review."

20 Do you see that?

21 A. I do.

22 Q. And do you understand that to be --

1 "this review" being -- to refer back to the  
2 review of country conditions in the prior  
3 paragraphs?

4 A. In general, yes.

5 Q. Okay.

6 A. But it also talks -- it could be --  
7 also be referring to a more general review.  
8 Because the first paragraph under this section  
9 says: "Since the last extension was announced,  
10 DHS has reviewed conditions in Haiti."

11 So the fact that there might not be  
12 conditions specifically mentioned in this  
13 section doesn't mean that they weren't  
14 necessarily considered.

15 So this -- "based upon this review,"  
16 could be referring to that first paragraph,  
17 which refers to things that are outside of the  
18 four corners of this document.

19 And then there's five bullet points  
20 that --

21 Q. Right.

22 A. -- have different things below it.

1 Q. Okay. Let's look at those bullets  
2 or at least the first two.

3 So based upon the review, it reads  
4 that the -- secretary made various  
5 determinations, correct?

6 A. It says "Secretary has determined  
7 that," and followed by five bullet points.

8 Q. The first bullet point is that  
9 conditions that prompted the July 23rd, 2011  
10 redesignation of Haiti for TPS continue to be  
11 met, correct?

12 A. That's what it says.

13 Q. The next bullet is: "There continue  
14 to be extraordinary and temporary conditions in  
15 Haiti that prevent Haitian nationals (or aliens  
16 having no nationality who last habitually  
17 resided in Haiti) from returning to Haiti in  
18 safety," correct?

19 A. That's what it says.

20 Q. Is it true then, sir, that the  
21 secretary determined that conditions in Haiti  
22 as of late May 2017 warranted an extension of

1 Haiti's TPS status for a further six months?

2 MR. TYLER: I object to the extent,  
3 of course, the document speaks for itself.

4 So you are asking, upon his reading  
5 of this document this morning in this  
6 deposition, does he understand it to come to  
7 that conclusion?

8 MR. MEDOW: Yes. I'm asking for  
9 his -- making -- his help in understanding what  
10 the document says.

11 THE WITNESS: Well, I think the  
12 document also has three other bullet points.  
13 Because it is not contrary to the national  
14 interest of the United States to permit  
15 Haitians or aliens having no nationality who  
16 last habitually resided in Haiti who meet the  
17 eligibility requirements of TPS to remain in  
18 the United States temporarily.

19 It also says: "The designation of  
20 Haiti for TPS should be extended for a  
21 six-month period."

22 And the last one says: "It is in

1 the best interest of TPS beneficiaries to  
2 prepare for their return to Haiti in the event  
3 that Haiti's TPS designation is not extended  
4 again, including requesting updated travel  
5 documents from the government of Haiti."

6 BY MR. MEDOW:

7 Q. Was it the view of DHS in May of  
8 2017 that conditions in Haiti as of that point  
9 in time warranted an extension of TPS status  
10 for Haiti for six months?

11 MR. TYLER: I -- I object. He's not  
12 a 30(b)(6) witness. He's not speaking on  
13 behalf of the agency. And I'm confused by  
14 counsel's --

15 MR. MEDOW: Then I'll --

16 MR. TYLER: -- question again.

17 MR. MEDOW: Then I'll rephrase.

18 BY MR. MEDOW:

19 Q. Was it your understanding, sir,  
20 that, as of late May 2017, that the secretary  
21 had determined that conditions were such that a  
22 further extension of Haiti's TPS status for six

1 months was warranted?

2 A. Well, if it wasn't warranted, he  
3 wouldn't have made the designation. But he  
4 was -- my recollection is that it was a very,  
5 very close call; and that, based upon a  
6 assurances from the Haitian government and the  
7 conditions that met the statutory factors,  
8 Secretary Kelly made the decision to extent it  
9 for six months.

10 There were specific -- there were  
11 specific assurances made from the Haitian  
12 government that they wanted TPS recipients in  
13 the United States back in Haiti; they would  
14 welcome them with open arms; they view them as  
15 tremendous assets to their country.

16 We flew to Haiti. We met with the  
17 Haitian president. We discussed TPS with the  
18 Haitian president. And all that they asked for  
19 was a little bit more time to prepare for the  
20 eventual return of their nationals.

21 Q. The meeting in Haiti was after this  
22 notice came out, correct?

1           A.       I don't remember when it was.

2           Q.       If I suggested to you the meeting  
3 occurred on May 31st, would that sound right to  
4 you?

5           A.       I don't know. It was sometime in  
6 May.

7           Q.       Do you --

8           A.       I --

9           Q.       Can -- do you recall specifically  
10 whether the trip to Haiti occurred before the  
11 publication of this notice?

12          A.       I don't remember. I know we met  
13 with them, and we met with their ambassador in  
14 the United States multiple time in 2017, both  
15 before this and after this.

16                   And the repeated ask of the Haitian  
17 government was simply for a little bit of time  
18 of an extension if the conditions were  
19 warranted, because they wanted their people  
20 back, and they just simply needed more time to  
21 do it; that they were excited about the  
22 opportunity of having their nationals return to



1 Haiti; they viewed them as tremendous economic  
2 assets to their country; and they simply wanted  
3 more time.

4 This is burned in my memory.

5 Q. Did the --

6 A. And --

7 Q. Did the Haitian government -- in  
8 connection with this decision in May of 2017,  
9 did the Haitian government affirmatively  
10 request that the TPS designation be extended?

11 A. That is my recollection.

12 Q. For how long?

13 A. I don't recall. As long as  
14 possible. I don't remember if they said  
15 multiple years or if they recognized that  
16 there's an outer 18-month boundary. I -- I  
17 don't recall the specifics.

18 They wanted more time. They said  
19 they were going to set up offices in the United  
20 States across the country to produce travel  
21 documents for their nationals; they were going  
22 to do all kinds of wonderful things to prepare

1 for the return of their nationals.

2 We assured them though, of course,  
3 that the decision -- if a decision was made to  
4 end TPS, it would not result in the automatic  
5 deportation of TPS recipients; that oftentimes  
6 TPS recipients are eligible for other  
7 immigration benefits; that they could apply for  
8 those immigration benefits; There is no  
9 automatic deportation; they would not have tens  
10 of thousands of people coming back to their  
11 country overnight.

12 And they understood that and simply  
13 wanted more time.

14 Q. Isn't it true the Haitian government  
15 asked for at least an 18-month extension?

16 A. As I just said, I think they asked  
17 for as much time as we could give them.

18 Q. And the -- the maximum you could  
19 give under the statute was 18 months?

20 A. 18 months is the maximum.

21 Q. And instead they got six months,  
22 right?

1           A.       Instead they got six months.

2           Q.       The -- the assurances you -- you  
3       referred to from the government of Haiti, I  
4       want to focus on prior to the issuance of the  
5       notice.

6                   From whom were those assurances  
7       provided?

8           A.       The ambassador.

9           Q.       To Haiti -- I'm sorry.  
10                   To the Haitian ambassador to the  
11       United States?

12          A.       Yeah. I believe it was Ambassador  
13       Altidor and some other representatives of their  
14       government.

15                   And again, I -- I apologize. I  
16       don't remember specifically when we went to  
17       Haiti, whether it was before or after this  
18       Federal Register notice.

19                   I know that we met in -- with the  
20       president in the presidential palace of Haiti.  
21       We talked to them about TPS. It was something  
22       we discussed.

1           It could have been in those  
2   discussions that we talked about the progress  
3   that -- that General Kelly -- or Secretary  
4   Kelly expected to see over the -- in this  
5   period. But I don't -- I don't recall  
6   specifically.

7           Q.     I didn't make copies. I'll -- but  
8   I'll represent to you, sir, that on May 31st of  
9   2017 DHS published a readout of Secretary  
10   Kelly's trip to Haiti which indicates that it  
11   occurred today, meaning May 31st.

12          A.     Okay.

13          Q.     So assuming the readout published by  
14   DHS is accurate, then the trip would have been  
15   after the publication of the Federal Register  
16   notice, correct?

17          A.     It seems that way.

18          Q.     So again, focusing on contact with  
19   the Haitian government prior to the publication  
20   of the notice, there was the meeting with the  
21   ambassador, correct?

22          A.     Yeah. We met with the ambassador on

1 multiple occasions. And I couldn't tell you  
2 the specific other governmental officials. He  
3 was typically not alone when he came. I don't  
4 remember who came with him.

5 But he came and made those -- it was  
6 the repeated ask. And there were -- and those  
7 were the repeated assurances that were provided  
8 every step throughout this process.

9 Q. Did the -- do you recall, sir,  
10 whether or not the ambassador publicly  
11 criticized the decision after it was announced  
12 in May?

13 A. He might have. I don't -- I don't  
14 recall. People often say things publicly that  
15 are different than what they said behind closed  
16 doors.

17 Q. Do you have a specific recollection  
18 that he said something publicly different than  
19 what was said in -- behind closed doors?

20 A. I don't have a specific  
21 recollection.

22 Q. Other than -- again, focusing on the

1 period before the Federal Register notice.

2           Aside from whatever you heard from  
3 the ambassador, were there any other  
4 communications that provided what you called  
5 assurances from the government of Haiti?

6           A.       The ambassador would have  
7 communicated anything on behalf of his  
8 government, to the best of my recollection.

9           Q.       There was -- I was just trying to  
10 see is there anybody else --

11          A.       I --

12          Q.       -- that you remember?

13          A.       I don't remember anyone else. I --  
14 I remember him. And I remember him as the  
15 primary conduit that we engaged with.

16          Q.       So this extension lasted through  
17 January 22nd of 2018?

18                 I'm looking at the very first  
19 paragraph of the notice.

20          A.       Yep.

21          Q.       So again, working back 60 days,  
22 would that mean the next decision point would

1 be roughly in late November of 2017?

2 A. That seems reasonable.

3 MR. MEDOW: It's 12:30 now. This  
4 may be as good a point as any to take -- break  
5 for lunch, but...

6 THE WITNESS: I defer to you-all's  
7 stomachs. I'm fine for whatever.

8 MR. MEDOW: Okay.

9 MR. TYLER: Well --

10 MR. MEDOW: We can break now.

11 MR. TYLER: Let's break now.

12 MR. MEDOW: Okay.

13 THE VIDEOGRAPHER: We are going off  
14 the record.

15 The time is 12:27 p.m.

16 (A short recess was taken.)

17 THE VIDEOGRAPHER: We are back on  
18 the record.

19 The time is 1:14 p.m.

20 BY MR. MEDOW:

21 Q. Okay. Mr. Hamilton, I think when we  
22 broke we had just looked at some documents that

1 indicated that the next decision point for DHS  
2 on Haiti would be in late November 2017.

3 Do you recall that?

4 A. I do recall that.

5 Q. Okay. Now, I'd like to talk first  
6 about your involvement in that decision through  
7 October 27th when you left DHS.

8 As of the date when you left DHS in  
9 the end of October of 2017, had a decision been  
10 made at that point as to whether or not to  
11 extend Haiti under TPS?

12 A. I don't recall a decision having  
13 been made.

14 Q. And I know you -- you testified in  
15 the DACA deposition -- you said several times  
16 there's no decision -- I think your term was  
17 until there's ink on the page. I -- I  
18 understand that.

19 But you also at other times talked  
20 or distinguished that from a tentative  
21 decision.

22 Had any tentative decision been made



1 on Haiti's TPS status as of the end of October  
2 of 2017?

3 A. As of the time that I left the  
4 Department of Homeland Security, I was unaware  
5 of a decision of any kind.

6 Q. As of that point in time, where did  
7 you think things stood with respect to Haiti in  
8 terms of the -- the upcoming decision on  
9 whether or not to extend?

10 MR. TYLER: Objection. Vague.

11 THE WITNESS: If you could clarify a  
12 little bit I could probably give you a better  
13 answer.

14 BY MR. MEDOW:

15 Q. I -- part of the problem with  
16 discovery is you don't know. So that's why I  
17 got to ask. So I'm not sure how much more I  
18 can clarify it.

19 I'm just -- as of the time when you  
20 left DHS, where did you -- or how -- where were  
21 things in the process, where did you think they  
22 stood, with respect to the decision on whether

1 or not to extend?

2 A. I think, in the process, it was in  
3 progress. Outside of that, I have no specific  
4 recollection of, you know, precisely what was  
5 being done.

6 I know that people were working on  
7 evaluating country conditions. I know that  
8 there were ongoing consultations with the  
9 Haitian government.

10 As I testified earlier, I -- I seem  
11 to recall meeting with the Haitian ambassador  
12 at least once maybe in the September, October  
13 time frame. Could be a little off on that.  
14 But I think it was generally around September,  
15 October.

16 So there was general preparation  
17 work, to the best of my recollection. But I  
18 don't -- I couldn't tell you any specifics.

19 Q. Had -- within DHS, had views been  
20 expressed one way or the other in terms of  
21 whether or not Haiti should be extended?

22 A. Had views been expressed by?

1 Q. Various people within the  
2 department?

3 A. Well, I'm certain that, if people  
4 were working on the preparation and evaluating  
5 country conditions, some people may have been  
6 talking about it. But I don't have any  
7 specific recollections.

8 Q. All I can ask is your recollection.

9 I'm just curious, as of the time you  
10 left, had you heard some people within DHS  
11 advocate for extension, advocate against, that  
12 type of thing?

13 A. I don't recall any specifics.

14 MR. MEDOW: Let me...

15 (Deposition Exhibit 141 was marked  
16 for identification.)

17 BY MR. MEDOW:

18 Q. Okay. Mr. Hamilton, you've been  
19 handed what's been marked as Exhibit 141.

20 Appears to be an e-mail chain  
21 bearing Bates CP 00002736 through 38. You are  
22 shown as a recipient of at least -- I think of

1 all the e-mails on this chain, or if not that,  
2 some of them.

3 Let me direct your attention to the  
4 beginning e-mail on the chain on the last page.

5 A. Okay.

6 Q. Actually -- no. You're shown as a  
7 CC on that.

8 Do you see it?

9 A. I do see --

10 Q. It's a --

11 A. -- my name.

12 Q. Yeah. It's an e-mail on Sunday,  
13 October 22nd, 2017, 4:47 p.m., from  
14 Ms. Nuebel Kovarik to various people, correct?

15 A. It appears that way.

16 Q. And Ms. Nuebel Kovarik indicates in  
17 the first line of her e-mail that Acting  
18 Secretary Duke has to make a decision for  
19 TPS -- or on TPS for, among other countries,  
20 Haiti.

21 Do you see that?

22 A. I do.

1 Q. So that would be consistent with  
2 your recollection that no decision had been  
3 made as of late October?

4 A. Yes.

5 Q. Indicates the acting secretary  
6 wanted input from various other departments and  
7 agencies; is that correct?

8 A. Yes.

9 Q. And she was reaching out to various  
10 people in the White House, is it?

11 A. It appears that way.

12 Q. And I -- I'm looking at the e-mail  
13 addresses WHO -- or various people at  
14 WHO.EOP.gov.

15 Is that the e-mail address for the  
16 executive office of the president?

17 A. That's my general understanding  
18 that's one of the general conventions.

19 Q. Had Assistant Secretary Duke -- I'm  
20 sorry -- Acting Secretary Duke raised with you  
21 this notion of reaching out to other  
22 departments and agencies?

1           A.       I don't remember. I -- I know that  
2       that was part of the process generally, but I  
3       -- I don't remember.

4           Q.       And you have an e-mail on later --  
5       about a half hour later, it looks like.

6                    On the first page at the bottom, is  
7       that your e-mail responding back to the group  
8       at 5:17 p.m. on the same day?

9           A.       On a Sunday afternoon, working hard,  
10       appears that way.

11          Q.       And you talk about it - on getting  
12       this agency input to do it through OMB, and  
13       they have 24 to 48 hours to tell us, et cetera.

14                    Do you see that?

15          A.       I do.

16          Q.       Were -- were you trying to put these  
17       agencies on a tight clock to get their input  
18       in?

19          A.       If I can just -- give me a second to  
20       look --

21          Q.       Sure.

22          A.       -- at the rest of the...

1 Q. Go ahead.

2 A. Judging from the e-mail chain, it  
3 appears as though, yes, I was trying to get  
4 information produced to the secretary -- acting  
5 secretary in a timely fashion.

6 Q. Okay. And then you write at the  
7 last two sentences of your e-mail: "We aren't  
8 going to get into a whole 'there are a lot of  
9 people who would be impacted' type of PCC, DC  
10 or PC. We have to show fidelity to the laws  
11 passed by congress."

12 Do you see that?

13 A. I do see that.

14 Q. First of all, let's just make sure  
15 we understand the abbreviation.

16 PCC is what?

17 A. PCC typically refers to a policy  
18 coordinating committee.

19 Q. DC is what?

20 A. A deputies committee.

21 Q. And PC is what?

22 A. Principals committee.

1 Q. And does principals refer to the  
2 heads of cabinet-level agencies?

3 A. Generally, and senior White House  
4 officials.

5 Q. What did you mean when you say we're  
6 not "going to get into a whole" lot of "'there  
7 are a lot of people who would be impacted' type  
8 of PCC, DC or PC"?

9 A. I don't remember my specific mindset  
10 at that point in time. It seems to be  
11 indicating -- and I can speak to my experience  
12 with interagency processes generally. Because  
13 in a e-mail chain below, there is a mention  
14 about convening a PCC. There is a -- bottom of  
15 the e-mail chain says that she has to make her  
16 decisions by November 6.

17 This is October 22nd of 2017.  
18 Putting things to a PCC, DC, PC is a --  
19 generally a very slow process. And generally  
20 you're not going to get the information that  
21 you need to get out of the relevant agencies if  
22 you want to go through that type of a route.



1                   And so what I see my e-mail  
2     indicating is a desire to go through OMB  
3     because that will provide quicker results and  
4     relevant results.

5                   (Deposition Exhibit 142 was marked  
6     for identification.)

7                   THE WITNESS: Thank you.

8                   BY MR. MEDOW:

9           Q.       Okay. Mr. Hamilton, you've now been  
10   given Exhibit 142.

11                   Appears to be another e-mail chain,  
12   this one with Bates CP 00026652 through 54.

13       A.       Okay.

14       Q.       Let's start with the first -- the  
15   e-mail at the bottom of the chain, the first  
16   one chronologically, this was an e-mail from  
17   Ms. Nuebel Kovarik, correct?

18       A.       It looks that way.

19       Q.       We're now two days later, October  
20   24th?

21       A.       That would be two days later.

22       Q.       And you're -- you're listed as a CC

1 recipient?

2 A. That's my e-mail address, yes, sir.

3 Q. Okay. And Ms. Nuebel Kovarik -- I'm

4 -- I'm -- I'm looking at the last line.

5 She's -- writes: "I anticipate that our

6 director will send up a memo with

7 recommendations by weekend."

8 Do you understand that to be a

9 reference to the USCIS director?

10 A. I would assume so.

11 Q. And the memo with a recommendation,

12 would that be the decision memo that we had

13 talked about earlier in the process?

14 A. It seems to be related.

15 Q. Okay. So would this indicate then

16 to you that, at least as of October 24th, there

17 had not been a -- a decision memo released from

18 USCIS up to the secretary or acting secretary?

19 A. Looking at her e-mail only, I would

20 assume that. But I have no specific

21 recollection.

22 MR. MEDOW: Let me give you another

1 document.

2 (Deposition Exhibit 143 was marked  
3 for identification.)

4 BY MR. MEDOW:

5 Q. Okay. You should now have Exhibit  
6 143, Mr. Hamilton, another e-mail chain bearing  
7 Bates CP 00003698 and 99.

8 I don't believe you are on this  
9 chain.

10 So have you ever seen it before?

11 A. No. I don't -- no recollection of  
12 seeing this document.

13 Q. Okay. Let me -- let me just ask you  
14 a few questions around it.

15 You see the top e-mail is from  
16 remember Robert Law?

17 A. I -- yes.

18 Q. And that -- that's the gentleman we  
19 talked about earlier who was with the FAIR  
20 organization and later joined DHS?

21 A. I think that's one and the same.

22 Q. Okay. Do you recall how -- by

1 looking at the date here, he's -- he's pretty  
2 clearly at DHS by October 22nd.

3 You'd agree with that, I guess.

4 A. I -- I would agree with that.  
5 Otherwise he wouldn't have had that e-mail  
6 address.

7 Q. Do you have -- does that help you  
8 tie at all when he joined the agency?

9 A. No.

10 Q. Why don't you take a minute to just  
11 review briefly the chain.

12 A. Okay.

13 Q. Do you read this as referring to the  
14 USCIS decision memo we've been talking about?

15 A. It appears to refer to a decision  
16 memo based on the text of the e-mail, but --

17 Q. That may -- the RE line -- or the  
18 subject line for the e-mail chain is Haiti  
19 draft TPS memo, correct?

20 A. That's what it says.

21 Q. Okay. Given that, would you  
22 understand this to be referring to a draft

1 decision memo on Haiti TPS?

2 A. Probably.

3 Q. Do you see in the second -- I'm  
4 sorry -- third e-mail down on the first page  
5 Mr. Law's e-mail on another Sunday -- or I  
6 guess the same Sunday, October 22nd, 2017, at  
7 6:28?

8 Do you see that?

9 A. I do.

10 Q. And he writes -- again, the subject  
11 line is "Haiti draft TPS memo."

12 This -- "The draft is overwhelmingly  
13 weighted for extension, which I do not think is  
14 the conclusion we are looking for."

15 Do you see that?

16 A. I see that.

17 Q. Do you know who the "we" is that  
18 he's referring to?

19 A. I do not.

20 Q. Do you know where Mr. Law got the  
21 opinion that the conclusion -- extension was  
22 not "the conclusion we are looking for"?

1           A.       I do not know.

2           Q.       Had you discussed, as of this point  
3   in time, with Mr. Law the upcoming decision on  
4   Haiti TPS?

5           A.       I have no specific recollections of  
6   a discussion about extending TPS.   It's  
7   possible he was there at a meeting.   I have no  
8   idea.

9           Q.       In the first -- for the top e-mail  
10   on the chain, he writes:   Edit -- "Edits  
11   attached.   I made the document fully support  
12   termination," and continues on.

13                   Do you see that?

14          A.       I see that.

15          Q.       Do you know what changes he made to  
16   the document to make it fully support  
17   termination?

18          A.       I have no idea.   Not on this e-mail  
19   chain.   Didn't see this document.   I couldn't  
20   tell you.

21          Q.       As of this point in time,  
22   October 22nd -- or I guess, more generally, the

1 last week in October, your last week with --  
2 with DHS, as of that point in time, did you  
3 personally have a view as to whether or not TPS  
4 should be extended for Haiti or not?

5 A. I don't recall having a specific  
6 view.

7 Q. Did you have a general view?

8 A. I recall the last designation being  
9 a close -- a very, very close call for the  
10 secretary. Secretary Kelly, that is.

11 And again, I recall the government  
12 of Haiti expressing a strong desire to have  
13 their nationals return to Haiti.

14 So other than that, I -- I don't  
15 recall having any specific thoughts.

16 Q. Did the government of Haiti express  
17 this view between the May 2017 decision that  
18 we've already talked about and November of  
19 2017?

20 A. To the best of my recollection, yes.

21 Q. In writing or orally?

22 A. Primarily orally. I don't know that

1 anything came in writing. But as we discussed  
2 earlier, there was a trip to Haiti. We met  
3 with the Haitian government, the highest  
4 levels.

5 And then in the fall, as I testified  
6 earlier, I recall meeting with the ambassador,  
7 if not others, where the same sentiments were  
8 expressed, simply expressing a desire for a  
9 little bit more time.

10 Q. Did the Haitian government request  
11 termination of TPS for Haiti?

12 A. Not to my recollection.

13 Q. Did they -- let -- let's -- let's  
14 break the time periods down so we have a clean  
15 record. Let -- let's focus -- go back a little  
16 bit to the time period leading up to the May  
17 2017 decision to extend.

18 A. Okay.

19 Q. Prior to then, had the government of  
20 Haiti requested termination of TPS for Haiti?

21 A. I don't recall them making any  
22 recommendation to terminate TPS.



1 Q. Did they request extension?

2 A. I believe, as I said earlier, that  
3 they requested more time, which would be the  
4 equivalent of an extension.

5 Q. Of at least 18 months?

6 A. At least 18 months or as long as we  
7 could give them.

8 Q. Now, the -- then let's focus on the  
9 time period again between May and November  
10 2017.

11 In that time period, did the  
12 government of Haiti request termination of  
13 Haiti's designation under TPS?

14 A. Not to my recollection.

15 Q. Did it request extension?

16 A. They -- as I've said multiple times,  
17 they requested more time.

18 Q. Would that include an extension past  
19 -- as you may recall, the -- the decision in  
20 May had extended TPS through January 22nd of  
21 2018, correct?

22 A. That's -- yes.

1 Q. Okay. Did the government of Haiti  
2 request an extension beyond January 22nd, 2018?

3 A. They asked for more time. So I  
4 would assume that means an extension.

5 Q. How much more time?

6 A. I don't recall specifically.

7 Q. Was it again at least --

8 A. I think it was generally as much  
9 time as we could give them.

10 Q. So again, at least 18 months?

11 A. I would assume so. That's the  
12 statutory maximum. I don't know that they --  
13 again, I don't know that they have any specific  
14 knowledge of the statute and what it permits  
15 and what it doesn't.

16 Q. Did the government of Haiti submit  
17 written submissions to DHS in connection with  
18 these two decisions in May and November?

19 A. I don't remember.

20 Q. Had they done so, would that be  
21 something that would have been routed to you  
22 for your review?

1 A. I think so.

2 Q. But as you --

3 A. Probably would have.

4 Q. But as you sit here, you have no  
5 recollection --

6 A. I don't --

7 Q. -- of those?

8 A. I don't recall seeing anything  
9 specifically from the government. But it --  
10 there may have been a letter or two that  
11 expressed generally we want more time. But  
12 I -- I don't recall anything specific.

13 Q. And so you're clear, I'm -- when I'm  
14 talking about the government of Haiti, I'm  
15 including their ambassador to the U.S.

16 Have you understood the questions  
17 that way?

18 A. Yes.

19 Q. Now -- okay. So now we move to  
20 November, and you move to Department of  
21 Justice, right?

22 A. In the last week of October, I moved

1 to the Department of Justice.

2 Q. Your first -- let's see. The 27th  
3 was a Friday.

4 So the first -- your first day at  
5 Justice was what, the -- Monday the 30th of  
6 October?

7 A. Whatever Monday that was, yeah.

8 Q. From that point forward, did you  
9 have any involvement with the decision on  
10 whether or not to extend Haiti -- Haiti's  
11 designation under TPS beyond January 22nd of  
12 2018?

13 A. My only involvement was to advise  
14 the attorney general on anything that  
15 influenced Department of Justice pertaining to  
16 TPS.

17 Q. I'm not sure I followed you there.

18 You said advise the attorney general  
19 only on anything that influenced the Department  
20 of Justice pertain -- did you mean anything  
21 that affected the Department of Justice?

22 A. No. So what -- what I mean by that

1 is obviously the attorney general doesn't have  
2 a statutory role in making the decision after  
3 the Homeland Security Act of 2002.

4 So if TPS came up in discussion at  
5 any point in time, I would have advised the  
6 attorney general on the laws surrounding it.  
7 But I don't recall any specifics.

8 Q. Did you personally have any further  
9 involvement in the discussions about whether or  
10 not TPS should be extended for Haiti?

11 A. I know I attended a meeting at the  
12 White House where TPS was a subject of  
13 discussion. But other than that, I have no  
14 specific recollection.

15 Q. First of all, the -- well, we'll get  
16 to that meeting in a second.

17 The -- the ultimate decision was  
18 what with respect to Haiti.

19 A. I think it was to terminate with 18  
20 months.

21 Q. 18 months to?

22 A. Terminate.

1 Q. So the termination wouldn't become  
2 effective for 18 months?

3 A. That's correct.

4 MR. MEDOW: Let's tie down some  
5 dates.

6 (Deposition Exhibit 144 was marked  
7 for identification.)

8 BY MR. MEDOW:

9 Q. Okay. You should now have Exhibit  
10 144, Mr. Hamilton.

11 Appears to be an e-mail from DHS  
12 press office to at least your DHS e-mail  
13 address on November 20th, 2017, attaching a  
14 press release. Bears Bates CP 00033469 and 70.

15 Was that e-mail address still active  
16 on November 20?

17 A. I don't know whether it was still  
18 active. But I certainly didn't have access to  
19 it.

20 Q. Okay. That's kind of what I assumed  
21 you -- was the situation.

22 Were you aware though -- did you, by

1 one means or another, get ahold of this press  
2 release or see it?

3 A. I don't remember --

4 Q. Do you --

5 A. -- seeing it specifically. But I  
6 assume -- I see a lots of their press releases.

7 Q. This indicates that the decision was  
8 at least announced on November 20th of 2017,  
9 right, the date of the --

10 A. That's what --

11 Q. -- press release?

12 A. -- it says, "today," and the date is  
13 November 20th.

14 Q. Did you have any role in the  
15 drafting of the press release?

16 A. I didn't work at DHS anymore. So I  
17 don't...

18 Q. Did they share drafts with you  
19 before it went out?

20 A. I don't have any recollection.

21 Q. Does this -- does that date,  
22 November 20th, is that consistent with your

1 general recollection as to when the decision  
2 was made as to whether or not to extend Haiti?

3 A. I mean, to the extent that I was  
4 aware of it from where I was at Department of  
5 Justice, it seems right. But I -- I don't know  
6 specifically when Elaine Duke made her  
7 decision.

8 Q. Okay.

9 A. It was on November 20th. Maybe it  
10 was 5:00 o'clock in the morning. I -- you  
11 know, 11:00 o'clock. I have no idea.

12 Q. Typical process though was to issue  
13 a press release once the decision was made,  
14 correct?

15 A. I think so.

16 Q. Okay. Now, let's -- the -- the  
17 meeting at the White House, was this a meeting  
18 of a principal small group?

19 A. Yes. I think so.

20 Q. And who -- when -- when did it  
21 occur?

22 A. Well, it would have been between



1 this date and the date I came to Justice.

2 Q. "This date" being 10 --

3 A. November 20th and, you know, October  
4 30th. Some time between there. In that time  
5 period.

6 Q. You attended, you said?

7 A. I believe so.

8 Q. Who else do you recall attending?

9 A. The -- the attorney general, the  
10 acting secretary, the Tom Bossert, Stephen  
11 Miller. There may have been some other  
12 attendees, but I can't remember everyone off  
13 the top of my head.

14 Q. Mr. Bossert's position was what?

15 A. Tom Bossert was the Homeland  
16 Security adviser.

17 Q. At the White House?

18 A. Yes.

19 Q. Anyone -- again, anyone else you  
20 recall at the meeting?

21 A. I know there's people there, but I  
22 -- I don't remember.

1 Q. Was this a meeting in the situation  
2 room?

3 A. It was.

4 Q. How long did it last?

5 A. I couldn't tell you.

6 Q. Hour? More than an hour?

7 A. I have no -- no recollection at all.

8 Q. It wasn't a full day, though, was  
9 it?

10 A. I don't think so.

11 Q. What do you recall the meeting in  
12 terms of what was said?

13 MR. TYLER: Object to the extent it  
14 calls for deliberations between government --  
15 government people at -- present at that  
16 meeting.

17 You can ask what the subject of the  
18 meeting was.

19 MR. MEDOW: Well, let's start with  
20 that.

21 BY MR. MEDOW:

22 Q. What was the subject of the meeting?

1           A.       I seem to recall TPS being generally  
2     the subject of the meeting.

3           Q.       When you say "generally," was it in  
4     connection with specific countries or TPS more  
5     generally?

6           A.       I couldn't tell you.

7           Q.       Were any presentations made?

8           A.       Not to my recollection.

9           Q.       Were there materials distributed in  
10    advance of the meeting?

11          A.       There may have been.

12          Q.       Do you recall?

13          A.       They typically -- most White House  
14    meetings have materials generated in advance.  
15    So likely yes.

16          Q.       I take it you don't recall the  
17    contents of those materials, if there -- if  
18    there were any, that were circulated in  
19    advance?

20          A.       I assume they would have discussed  
21    TPS.

22          Q.       Beyond that?

1           A.       I have no specific recollection of  
2   the contents of the materials.

3           Q.       Other than I think you said the  
4   acting secretary was there, correct?

5           A.       Yes.

6           Q.       That'd be Duke?

7           A.       Yes.

8           Q.       Was anyone else there from DHS?

9           A.       I couldn't tell you specifically. I  
10   know that the chief of staff attended most  
11   meetings with its acting secretary. So...

12          Q.       That'd be Mr. Wolf?

13          A.       Ted Wolf, probably. I seem to  
14   recall him being there, although I could be --  
15   that's largely speculation.

16          Q.       How about Ms. Nuebel Kovarik?

17          A.       I don't recall.

18          Q.       Were any decisions reached at that  
19   meeting?

20          A.       I don't remember.

21          Q.       Let me ask this in a yes-or-no  
22   format first.

1                   Do you recall the specific contents  
2   of what was said during the meetings?

3           A.       The specific contents?

4           Q.       Do you recall anything that was  
5   specifically said during the meeting?

6           A.       I remember no specific discussions  
7   during the meet -- or anything specifically  
8   said during the meeting.

9           Q.       Other than -- well, let -- let me  
10   ask you this: Did -- did the subject of Haiti  
11   come up?

12          A.       I would -- I -- I have no specific  
13   recollection of the subject of Haiti being  
14   discussed. But given the time frame, that  
15   generally seems right.

16          Q.       Did you take any notes during the  
17   meeting?

18          A.       I don't recall.

19          Q.       So do you generally take notes  
20   during meetings of this kind?

21          A.       No. Not anymore.

22          Q.       Since when?

1 A. Since probably October of 2017.

2 Q. What happened?

3 A. I don't recall.

4 I mean what do you mean what  
5 happened?

6 Q. Well, what -- what made -- so prior  
7 to October of '17 you did have -- you would  
8 take notes at meetings, and then you stopped?

9 A. I would take -- I would take notes  
10 at meetings. And sometimes occasionally I'll  
11 take notes at meetings now. But most of the  
12 time I don't take very copious notes.

13 Q. Was there something that happened in  
14 October of 2017 that had you change your  
15 practice?

16 A. I don't know that there was anything  
17 specific.

18 Q. What generally then occurred that  
19 led to the change?

20 A. We were facing a lot of intrusive  
21 litigation. And I recall -- maybe it was  
22 November. After my last deposition --

1 Q. In the DACA case, correct?

2 A. -- in the DACA case, the plaintiffs'  
3 counsel felt it appropriate to turn over the  
4 deposition transcript to a reporter, who then  
5 wrote an article.

6 And she Tweeted on Twitter all about  
7 it and talked about how proud she was to have  
8 deposed me and all the information that they  
9 got in their deposition.

10 And so, given that their primary  
11 interest seemed to be in abusing the discovery  
12 process, I tried to commit more to memory than  
13 on paper.

14 Q. The -- the article you're referring  
15 to, was that in the New Yorker?

16 A. I think so.

17 Q. On the subject of intrusive  
18 litigation, is it true that I guess about two  
19 months ago Attorney General Sessions gave a  
20 speech on that topic at the Heritage  
21 Foundation?

22 A. I don't remember.

1 Q. Did you have any involvement with  
2 that -- the preparation or drafting of that  
3 speech?

4 A. I generally helped the attorney  
5 general on a variety of issues. But I don't  
6 remember. You'd have to give me the specific  
7 date and location of the speech.

8 Q. Okay. At this -- at this point in  
9 time, do you recall any -- going back to the  
10 White House meeting -- do you recall anything  
11 else about the meeting in terms of its  
12 substance?

13 A. Just that TPS was generally  
14 discussed.

15 (Deposition Exhibit 145 was marked  
16 for identification.)

17 BY MR. MEDOW:

18 Q. Okay. Mr. Hamilton, you should now  
19 have what's been marked as Exhibit 145, a  
20 multi-page document bearing Bates  
21 AR-S\_HAITI-00000117 through 31.

22 A. Okay.



1 Q. Is this the -- was this document  
2 circulated in advance of the White House  
3 meeting we've been talking about?

4 A. It looks like it was.

5 Q. And this -- does this document  
6 relate to that -- the meeting you attended?

7 A. It -- again, on its face, it appears  
8 to relate to that meeting.

9 Q. And it indicates the -- on the  
10 first -- looking on the first page, it says it  
11 was circulated by the executive secretary and  
12 chief of staff of the National Security  
13 Council, right?

14 A. It appears that way.

15 Q. And that's Retired General Keith --  
16 I'm sorry -- Retired General Kellogg, correct?

17 A. Yes.

18 Q. And he writes on the first page:  
19 "There will be a principal small group meeting  
20 on Temporary Protected Status on Friday,  
21 November 3rd, 2017, from 9:15 to 10:00 a.m. in  
22 the White House situation room," correct?

1 A. That is what it says.

2 Q. And that -- that timing is  
3 consistent with your recollection of the White  
4 House meeting you attended, correct?

5 A. Yes.

6 Q. Okay. And if you go -- you see the  
7 -- there are two attachments. I'm looking on  
8 Bates Page 119. Refers to an agenda and a  
9 discussion paper.

10 Do you see that?

11 A. Yep.

12 Q. And then continuing on in the  
13 document, going to Bates Page 127, do you see  
14 the discussion paper which starts there,  
15 continues on through 129 with appears an  
16 attachment that continues on to 131?

17 A. Yep.

18 Q. Okay. Let's look at the -- the  
19 discussion paper on 127 at the top.

20 It's -- it's -- the first section is  
21 "Purpose," correct?

22 A. That is what it says.

1 Q. And it and it says: "To coordinate  
2 the conditions and process for terminating  
3 Temporary Protected Status (TPS) for aliens  
4 from El Salvador, Honduras, Nicaragua and  
5 Haiti, the acting secretary of Homeland  
6 Security must make a decision by Monday,  
7 November 6, 2017," correct?

8 A. That is what it says.

9 Q. And if you look on the second page  
10 of the discussion paper though, two Bates  
11 numbers down, for whatever reason, Bates 129,  
12 do you see in the second paragraph the first  
13 line reads: "In the cases of El Salvador,  
14 Honduras, Nicaragua and Haiti, the temporary  
15 conditions that arose out of natural disasters  
16 and supported TPS designations have long ceased  
17 to exist."

18 That what it says?

19 A. That is what it says.

20 Q. And under "Recommendation" on that  
21 same page, the recommendation was to terminate;  
22 is that true?

1           A.       It says: "Terminate with an  
2       effective date of January 5th, 2019, and engage  
3       congress to pass a comprehensive immigration  
4       reform to include a merit-based entry system.  
5       A 12-month delay in the effective termination  
6       date would allow for an orderly transition  
7       period for beneficiaries. Moreover, it would  
8       allow congress time to act to factor the fate  
9       of TPS beneficiaries into legislation. While  
10      many TPS beneficiaries may not qualify for  
11      legal status under a merit-based system,  
12      congress could craft alternatives to allow  
13      members of this group to remain. This  
14      administration could signal its support for  
15      such a resolution provided congress enact  
16      needed immigration reforms."

17          Q.       Does looking at this document  
18      refresh your recollection at all as to any  
19      discussions had at the meeting on November 3rd  
20      in the White House situation room?

21          A.       Other than TPS generally being  
22      discussed, no.

1 MR. MEDOW: All right. Now, going  
2 back to -- you mentioned intrusive litigation.  
3 We had a little bit of discussion about a  
4 speech the attorney general gave. Let me give  
5 you a copy of the speech to see if it jogs your  
6 recollection any.

7 (Deposition Exhibit 146 was marked  
8 for identification.)

9 BY MR. MEDOW:

10 Q. Okay. Exhibit 146, Mr. Hamilton, we  
11 got off I think the Department of Justice web  
12 site.

13 A. Okay.

14 Q. It's at least entitled "Attorney  
15 General Jeff Sessions Delivers Remarks to the  
16 Heritage Foundation on Judicial Encroachment in  
17 Washington on Monday, October 15th" --

18 A. Okay.

19 Q. -- "2018."

20 A. Nearly a year after this time period  
21 in question. Correct.

22 Q. That -- that time period. Correct.

1 A. And not at all related to TPS.

2 Q. Well, there are references to TPS.  
3 That's why I'm bringing it to your attention.

4 And again, do you have any  
5 recollection of your role in preparing this  
6 speech, if any?

7 A. I have no specific recollection.

8 Q. Any general recollection?

9 A. I mean generally we have speech  
10 writers who prepare speeches for the attorney  
11 general. And --

12 Q. Do you --

13 A. -- sometimes we edit them; and  
14 sometimes we don't.

15 Q. Would a speech like this typically  
16 be passed to you for review?

17 A. Maybe. This one --

18 Q. Okay.

19 A. -- might not have. I -- I don't  
20 remember.

21 Q. Okay. I'm looking -- it's -- it's  
22 not -- the pages are not numbered. But if you

1 look at the four -- fifth physical page.

2 A. You mean the --

3 Q. But I'll?

4 A. -- one, two, three, four, five.

5 Kind of in the middle.

6 Q. Yeah. It start -- it starts --

7 A. It says: "But an increasing number  
8 of judges" --

9 Q. Yes.

10 A. -- "are ignoring these boundaries  
11 and view themselves as something akin to roving  
12 inspectors general for the entire executive  
13 branch."

14 Q. Yes. That -- that page.

15 If you look down -- one, two, three  
16 -- I think the sixth paragraph on the page, the  
17 one that references  
18 "one of the DACA cases last year."

19 Do you see that?

20 A. Yes.

21 Q. It reads in the first sentence: "In  
22 one of the DACA cases last year, the district

1 court authorized the deposition of a senior  
2 counselor to the secretary of Department of  
3 Homeland Security about confidential advice he  
4 and others had given to the secretary."

5 Do you understand that to be a  
6 reference to your deposition in the DACA case?

7 A. Yes.

8 MR. TYLER: Counsel, I -- I'll --  
9 I'll object to this entire line of questioning.  
10 As the witness points out and as the document  
11 makes plain on its face, this occurred a year  
12 after the matters at issues in this lawsuit.

13 You're now questioning him about  
14 matters concerning DACA that have no relation  
15 to this lawsuit.

16 So where are we going with this?

17 MR. MEDOW: We're going to this next  
18 question.

19 BY MR. MEDOW:

20 Q. If you go -- if you see on the prior  
21 page, do you see -- one, two -- fourth  
22 paragraph from the bottom: "The third



1     manifestation of judicial encroachment is the  
2     increasing" -- "increasing authorization of  
3     invasive discovery into executive branch  
4     deliberations"?

5                     Do you see that?

6             A.       I see that.

7                     I see the next paragraph: "An  
8     increasing number of district judges are using  
9     purely legal disputes, which should be resolved  
10    by legal argument alone, to depose executive  
11    branch officials in order to disrupt an  
12    extensive disclosure of their internal  
13    deliberations and documents. These judges  
14    contend that all this information is necessary  
15    for the judge to decide whether the executive  
16    branch official had, in the judge's view, the  
17    wrong motives and taking away what otherwise  
18    would be a lawful administrative action. But  
19    in almost all of these cases motive is  
20    irrelevant. It is simply a legal question."

21            Q.       And it continues on, discussing the  
22    subject of intrusive discovery, which you

1 mentioned today as well, correct?

2 A. Yeah.

3 Q. Okay. Going on the -- on that fifth  
4 page, the page just from where you were  
5 reading, look to the -- toward the bottom of  
6 the page, fourth paragraph from the bottom:  
7 "Indeed, in the TPS case, the judge has gone so  
8 far as to order the production of a cabinet  
9 secretary's handwritten notes taken during a  
10 high-level White House meeting."

11 Do you see that?

12 A. I do see that.

13 Q. Is that -- do you know is that  
14 referring to notes taken at the meeting we're  
15 talking about on November 3rd?

16 A. I think so.

17 Q. Have you seen such notes?

18 A. I think so. I seem to recall seeing  
19 the notes.

20 Q. And were these Ms. Duke's notes that  
21 she took during the meeting?

22 A. Yes.

1 Q. How did you come into possession of  
2 them?

3 A. Just in my role as being the advisor  
4 to the attorney general on litigation matters  
5 involving immigration.

6 So any time there is high profile  
7 litigation, my job is to keep them in the loop,  
8 especially when it involves abusive discovery  
9 processes of cabinet officials.

10 Q. So did you get the -- Ms. Duke's  
11 notes from Ms. Dukes -- Ms. Duke -- excuse  
12 me -- or someone else at DHS; or did you get  
13 them from the public disclosure as a result of  
14 the discovery?

15 A. I would have received them as part  
16 of the discovery process, not directly from  
17 DHS.

18 Q. Okay. So they came to light in the  
19 Ramos case; is that right?

20 A. I think that's right.

21 Q. That was --

22 MR. TYLER: Counsel, I'm going to

1     also have to object to this. It's venturing  
2     into attorney work product privilege. It's --  
3     again, it's -- it's outside of any relevance to  
4     this lawsuit.

5                 Where are we going with this? I ask  
6     the question again.

7                 MR. MEDOW: The answer remains.  
8     We're going to the next question.

9                 BY MR. MEDOW:

10                Q. Did the -- did Ms. Duke's notes  
11     reflect discussions on TPS?

12                A. I don't remember.

13                Q. Did they reflect discussions on  
14     Haiti?

15                A. I -- they might have -- I don't want  
16     to tell you wrong. I don't remember exactly  
17     what they said. I think they talked -- might  
18     have mentioned -- made mention of TPS.

19                Q. Okay.

20                A. But again, I don't have a  
21     photographic memory. So I couldn't tell you.

22                Q. Okay.

1           A.       And I'll -- I'll go ahead and offer  
2   that I'm -- upon further reflection, this  
3   Sessions speech, I didn't work on this speech.  
4   I do recall other people, including the  
5   attorney general, wrote this speech. And I  
6   didn't -- I was not aware of it until he made  
7   it. So I had no recollection, no knowledge of  
8   its contents.

9                   MR. MEDOW: Okay.

10                   (Deposition Exhibit 147 was marked  
11   for identification.)

12                   (Deposition Exhibit 148 was marked  
13   for identification.)

14                   THE WITNESS: Could we take a break  
15   for a second?

16                   MR. TYLER: Yeah.

17                   Do we have coffee yet? We can --

18                   MR. MEDOW: Okay.

19                   MR. TYLER: Let's take a break.

20                   THE VIDEOGRAPHER: We are going off  
21   the record.

22                   The time is 2:02 p.m.

1 (A short recess was taken.)

2 THE VIDEOGRAPHER: Back on the  
3 record.

4 The time is 2:09 p.m.

5 BY MR. MEDOW:

6 Q. Mr. Hamilton, you -- right before  
7 the break you were handed two exhibits. And  
8 let me hopefully explain what they are or at  
9 least what we -- they purport to be.

10 Exhibit 147 is a series of  
11 handwritten notes. Bears Bates  
12 AR-S\_HAITI-00000113 through 16.

13 148 I believe are the same -- is  
14 another copy of the same notes. And it bears  
15 the Bates DPP\_00003562 and 65.

16 The only reason we've given you two  
17 copies is the second appears to be a better  
18 copy and a little bit more legible than the  
19 first. So I wanted you to have both available.

20 I guess the first question is have  
21 you seen these before, these --

22 A. These --

1 Q. -- handwritten notes?

2 A. I -- these look familiar, so they  
3 might have -- might have been what was produced  
4 in discovery that I saw, but...

5 Q. Okay. Well, I'll -- I'll represent  
6 to you, sir, that the government in this case  
7 has stipulated that these are Ms. Duke's notes.

8 A. Okay.

9 Q. I'll tell you further they -- they  
10 appear -- Exhibit 147 is part of the  
11 administrative record. And it appears right  
12 next to what we have marked as Exhibit 145, the  
13 White House memo regarding the November 3rd  
14 meeting; and that -- the Exhibit 147 has been  
15 identified in the privilege log provided by the  
16 government as reflecting Ms. Duke's notes "RE:  
17 Conversations with various officials during  
18 meeting at the White House about upcoming TPS  
19 decisions."

20 So --

21 A. Okay.

22 Q. -- just -- I wanted to share that

1 with you.

2 I'd like to direct your attention to  
3 -- well, let me back up.

4 Have you had a chance to discuss  
5 these notes with Ms. Dukes --

6 A. No.

7 Q. -- or Ms. Duke. Excuse me. Okay.

8 Have you had a chance to discuss the  
9 notes with anybody who attended the meeting on  
10 November 3rd?

11 A. I don't think I discussed these  
12 specific notes with anyone who attended that  
13 meeting.

14 Q. I am directing your attention on the  
15 first page of the notes.

16 Do you see there's a segment that  
17 says "Session" under cored a couple times?

18 A. Okay.

19 Q. And there's handwriting that goes to  
20 the end of that page and then appears to carry  
21 over to the next page.

22 And at 147 it's a little hard to



1 read. It's easier to read on 148, the next  
2 page. I believe it says "Sessions continued."

3 Do you see that?

4 A. Sure.

5 Q. Okay. Let me read to you at least  
6 what I make out the handwriting to be. And I'm  
7 principally working off the better, more  
8 legible copy, 148.

9 A. Okay.

10 Q. The first word kind of stumps me.  
11 Under -- I'm focusing on the portion under  
12 "Sessions."

13 First word, I don't know if you can  
14 make it out. I can't.

15 Seems to then say: "Time is long  
16 expected."

17 Next line: "Under law can't keep  
18 certifying."

19 Next line: "Can't concede the law."

20 Then it goes on: "If congress wants  
21 to deal with them, okay. Don't imply they've  
22 been mistreated. Not warned about dates."

1                   Next line: "Problematic to  
2   recertify. Just bite the bullets. Dangerous  
3   to separate Haiti out - prejudice against the  
4   Haitians."

5                   Continuing to the next page, says:  
6   "How did you let this happen? is what" American  
7   people "will say."

8                   I'm -- it looks like AM. I'm  
9   inferring that's American people.

10                  Then under that: "No one has the  
11   guts to pull the trigger. Cannot certify."  
12   Certify double underscored.

13                  Does that refresh your recollection  
14   at all, sir, as to any discussions at the  
15   November 3rd meeting?

16           A.     A little bit.

17           Q.     Tell me about that.

18                  MR. TYLER: No. Object to the  
19   extent it calls for deliberative information,  
20   deliberative discussions outside the four  
21   corners of this document.

22                  BY MR. MEDOW:

1 Q. Do you -- do you recall these  
2 comments made by Attorney General Sessions?

3 A. Which comments?

4 Q. Any of the ones I read.

5 A. I don't recall any specific  
6 comments. These are shorthand notes, and I  
7 don't know that they represent the comments  
8 that were made at the meeting or not. It might  
9 have been the note that she took, but I -- I  
10 don't -- I just don't know.

11 Q. Are you saying her notes are  
12 inaccurate?

13 A. I have no idea whether they're  
14 accurate or not. I -- I mean we could sit  
15 here, and I could ask you to transcribe by hand  
16 my deposition testimony right now. It'd  
17 probably differ from what the court reporter  
18 testimony is. So who knows?

19 Q. Okay. Have you specifically had  
20 occasion to talk to Attorney General Sessions  
21 about these notes and what he -- the notes  
22 appear to report him saying?

1           A.       I don't -- I don't recall a specific  
2       discussion with him on it.  Although I think --  
3       I think I talked to him about this topic  
4       generally.  But I -- I -- I don't recall  
5       specifically --

6           Q.       "This" --

7           A.       -- what we said.

8           Q.       -- "topic generally" means what?

9           A.       The -- the production of these notes  
10       and the litigation.

11          Q.       And I -- I take it both you and he  
12       think that should not have occurred.

13          A.       Well, I think that the speech that  
14       we read seemed to indicate as much from him.  
15       And I certainly think that it's pretty absurd  
16       that these were produced in that litigation.

17          Q.       Your counsel instructed you not to  
18       answer a question a few back.

19                   And I forgot to ask you are you --  
20       are you following his instruction?

21          A.       I am.

22                   MR. MEDOW:  Okay.

1 (Deposition Exhibit 149 was marked  
2 for identification.)

3 BY MR. MEDOW:

4 Q. Okay. You've now been handed what's  
5 been marked as Exhibit 149. It was previously  
6 an exhibit I think in one of the pleadings in  
7 the Ramos case. It was submitted as Exhibit  
8 66, document 99 -- 96-66 in Ramos.

9 I just want to direct your attention  
10 to a couple of entries here.

11 Do you see the -- the -- the  
12 earliest entry is on Wednesday, November 1st,  
13 2017, from Ms. Nuebel Kovarik?

14 A. Yes.

15 Q. And the subject line is "TPS  
16 decision memo in Haiti"; is that correct?

17 A. That's what it says.

18 Q. Okay. Then the next e-mail up is  
19 date -- dated November 3rd, 2017, in the  
20 afternoon?

21 A. That's what it says.

22 Q. And that's the same day as the White

1 House meeting that Exhibit 145 indicated was in  
2 the morning, correct?

3 A. If that's what it says.  
4 November 3rd.

5 Q. Meeting was scheduled for -- I think  
6 it says 9:15 to 10:00?

7 A. That's what that exhibit indicates.

8 Q. Okay. And going back in Exhibit 149  
9 on November 3rd, that same day in the  
10 afternoon, the -- it's redacted so we don't  
11 know who it's from.

12 But the second line of the e-mail  
13 says: "Per Kathy's read-out of today's PC,  
14 this needs to go to AS1's office today."

15 Do you see that?

16 A. I do see that.

17 Q. Okay. Just "read-out" at DHS meant  
18 what?

19 A. I don't know.

20 Q. Was -- was that a general term for a  
21 summary of a meeting or a report on a meeting?

22 A. I've heard that term used before --

1 Q. In that --

2 A. -- as a read-out, the meaning. But  
3 I have no idea what -- it seems to imply that's  
4 what that might mean. But I don't know. Never  
5 seen this e-mail.

6 Q. "Today's PC."

7 "PC" would you understand to be  
8 principal's committee?

9 A. Typically, yes.

10 Q. And that's what was reflected in  
11 Exhibit 145, the White House meeting?

12 A. Well, the White House meeting I  
13 think was technically represented as a  
14 principal small group meeting and not a PC.  
15 But I don't know if people meant that to be  
16 interchangeable. I'm not sure.

17 Q. What's the distinction between the  
18 two?

19 A. My understanding generally is that a  
20 PC is -- involves all principals. And a  
21 principals small group might just be ones that  
22 have equities in a subject.

1 Q. Some subset of the --

2 A. Could be.

3 Q. -- broader PC?

4 A. Could be.

5 Q. Okay. And --

6 A. I don't -- but I don't run the White  
7 House. So I -- I couldn't tell you how they  
8 make those decisions.

9 Q. Okay. AS1, is that -- at DHS, was  
10 that a typical reference for the acting  
11 secretary?

12 A. It was.

13 Q. Okay. At -- the reference to Kathy,  
14 you see that the e-mail is being sent to  
15 Ms. Nuebel Kovarik.

16 Do you see that?

17 A. I do.

18 Q. And it references her read-out from  
19 today's PC.

20 Does reading that refresh your  
21 recollection as to whether or not she attended  
22 the November 3rd White House meeting?



1 A. Don't remember.

2 Q. Then the last e-mail on the chain,  
3 one at the top of the second page of the  
4 exhibit, from Ms. Nuebel Kovarik to Mr.  
5 McCament and others that are redacted.

6 Do you see that?

7 A. Yes.

8 Q. And that -- that is another e-mail  
9 that same day, November 3rd, 2017, still in the  
10 afternoon?

11 A. It look that way. 2:46 p.m.

12 Q. And --

13 A. 2:45.

14 Q. -- she writes: "Frances has the  
15 clean version printed at the NAC, is" readying  
16 -- "is reading now and is ready to sign. After  
17 he signs, he is going to scan back to me but is  
18 likely to personally hand AS1 the memo at the  
19 4:30 meeting he has with her. Any problems  
20 with that?"

21 Do you see that?

22 A. I do.

1 Q. Again, the subject line of the  
2 e-mail is "TPS decision memo on Haiti,"  
3 correct?

4 A. That's what it says.

5 Q. Would you understand Frances to be a  
6 reference to Mr. Cissna, the head of USCIS?

7 A. I would assume so.

8 Q. And he is the -- as the head of  
9 USCIS, is it true he is the person who would  
10 send the decision memo from USCIS to the  
11 secretary?

12 A. Either -- most likely either him or  
13 his designee. I don't know if he physically  
14 carries it or sends it or if his secretary does  
15 it. I...

16 Q. NAC, is that the headquarters of  
17 DHS?

18 A. It is.

19 Q. Do you know if the decision memo  
20 did, in fact, go out on November 3rd, 2017, in  
21 the afternoon following the White House  
22 meeting?

1 MR. TYLER: I'll object. At this  
2 time this e-mail was written, he was no longer  
3 with DHS or employed with the Department of  
4 Justice. That calls for speculation.

5 MR. MEDOW: Object to the speaking  
6 objection.

7 If the witness doesn't know, he can  
8 answer and say that.

9 THE WITNESS: Like I said earlier,  
10 I've never seen this e-mail before. I wasn't  
11 at DHS when this was written. I have no idea.

12 You know, we can keep looking at it  
13 if you want.

14 MR. MEDOW: No. That's fine.

15 BY MR. MEDOW:

16 Q. Do you know of any follow-up  
17 communications with Acting Secretary Duke  
18 following the November 3rd meeting?

19 MR. TYLER: Objection. Vague.

20 With whom? That's fair.

21 BY MR. MEDOW:

22 Q. Are you aware of any follow-up

1 communications with Acting Secretary Duke  
2 following the November 3rd meeting on the same  
3 subjects addressed at that meeting?

4 A. Follow-up meetings with who though,  
5 specifically.

6 Q. Well, let me ask you direct.

7 Do you recall press report -- seeing  
8 press reports of calls by Mr. Kelly and  
9 Mr. Bossert to Ms. Duke the weekend following  
10 this meeting?

11 A. It sounds vaguely familiar but not  
12 specifically.

13 Q. Okay. Do you recall those press  
14 reports indicated that, in those calls, Mr.  
15 Kelly and Mr. Bossert repeated the message that  
16 the TPS designation should end?

17 A. I -- do you have copies of those  
18 reports? I'm not going to say something based  
19 off something I don't have --

20 Q. No. I --

21 A. -- have in front of me.

22 Q. I -- I have the article.

1           A.       I -- I -- I mean I have -- I -- I  
2     don't remember.

3           Q.       Okay. That's --

4           A.       There's been a lot of stuff that's  
5     been reported in the press that's false that --  
6     so I'm not going to...

7           Q.       My -- my question -- I mean that  
8     really is just a predicate to ask you do you  
9     know -- do you have any knowledge yourself,  
10    have you been told anything, as to what, if  
11    anything, was said in any such calls between  
12    Kelly and Bossert and Duke?

13          A.       I was not involved, didn't work  
14    there. I have no idea.

15          Q.       Anybody tell you what was said, even  
16    though you weren't there anymore?

17          A.       No. Not to my recollection.

18          Q.       Do you recall now that Mr. Kelly  
19    took exception to the way those calls were  
20    portrayed in the press?

21          A.       I don't know.

22                    They take exception to the way many

1 things are reported in the press.

2 Q. So as we have seen, the -- the White  
3 House meeting was November 3rd; and the  
4 reported decision on Haiti was about two and a  
5 half weeks later, November 20th?

6 A. I think that seems to be the general  
7 time line.

8 MR. MEDOW: Okay. Let's -- let's  
9 look at the Federal Register notice on that  
10 termination.

11 THE WITNESS: Okay.

12 (Deposition Exhibit 150 was marked  
13 for identification.)

14 BY MR. MEDOW:

15 Q. Okay. You should now have Exhibit  
16 150, Mr. Hamilton.

17 Do you recognize this to be a notice  
18 in the Federal Register dated January 18th,  
19 2018?

20 A. Sure looks like it.

21 Q. Okay. And does this relate to the  
22 decision to terminate Haiti's designation under

1     TPS?

2           A.     In bold letters it says:

3     "Termination of the designation of Haiti for  
4     Temporary Protected Status."

5           Q.     Now, this Federal Register notice  
6     was published roughly two months after the  
7     press release we looked at announcing the  
8     decision.

9                     Is that a typical amount of delay  
10    between press release decision and a Federal  
11    Register notice?

12          A.     I have no idea what the typical time  
13    frame is.

14          Q.     Do you know why there was roughly  
15    two months between the press release and the  
16    Federal Register notice?

17          A.     No.

18          Q.     What role, if any, did you have in  
19    generating the Federal Register notice, Exhibit  
20    150?

21          A.     Well, given that I didn't work at  
22    the Department of Homeland Security, my -- my

1 understanding is that I had zero role in  
2 generating that notice.

3 Q. Did you see any drafts of it?

4 A. I have no recollection of seeing a  
5 draft.

6 Q. Did you give any input as to what  
7 the contents should be or should not be?

8 A. I -- I don't have any recollection.

9 Q. Directing your attention to -- in  
10 the third page, first column, the heading "Why  
11 is the Secretary Terminating the TPS  
12 Designation For Haiti as of July 22nd, 2019"?

13 Do you see that?

14 A. I do.

15 Q. Why don't you take a minute to  
16 review that section and indicate when you have.

17 A. Okay.

18 Q. Does this section contain a  
19 discussion of conditions on the ground in Haiti  
20 as of January 18th, 2018?

21 A. It seems to.

22 Q. For the next series of questions,



1 you might want to have the prior notice out,  
2 the May 24, Exhibit 140 handy.

3 And the question I have is, to the  
4 extent you know, had the situation in Haiti  
5 improved since May 24th, 2017?

6 A. I think it was generally getting  
7 better, from my recollection of my time at DHS.

8 And I note one thing in here that  
9 does refresh my recollection.

10 Q. Which document are you looking at?

11 A. The -- the -- 150.

12 Q. Okay. So this is the --

13 A. This is --

14 Q. -- January --

15 A. This is the January notice.

16 Q. Yes, sir.

17 A. And it talks about the progress that  
18 has been made. And it notes that, in October  
19 of 2017, the United Nations withdrew its  
20 peacekeeping mission, noting the mission had  
21 achieved its goals.

22 I do recall -- I do recall that

1 being something that -- I do recall that being  
2 the case.

3 Q. That -- the -- the withdrawal had  
4 been announced in March of 2017, correct?

5 A. They had announced it earlier on in  
6 the year.

7 Q. And that had been referenced in the  
8 earlier Federal Register notice, Exhibit 140,  
9 correct?

10 A. I don't recall seeing that. If it's  
11 in there, that's great.

12 Q. I direct your attention in 140 to --

13 A. Yeah. It says it right there.

14 Q. Yeah. It --

15 A. Great.

16 Q. Just so we have it, it's the third  
17 page, first column, bottom of the first  
18 paragraph.

19 A. Yep. So it seems like they  
20 announced the security situation was improving  
21 in March. And they had plans to leave in  
22 October if it wasn't warranted. And seems like

1 it did, and they left.

2 So it's great.

3 Q. Okay. In -- so back -- it was known  
4 in May that the United Nations at least planned  
5 to remove its peacekeeping mission in October,  
6 correct?

7 A. Yeah. I remember that being --

8 Q. Okay.

9 A. -- an issue.

10 Q. Now, it's noted in the -- going to  
11 the January notice, it is cited that 98 percent  
12 of IDP, internally displaced persons, sites  
13 have closed.

14 Do you see that?

15 A. I see that.

16 Q. And in May -- the May notice,  
17 Exhibit 140, on the third page, first  
18 paragraph, it notes that a -- 96 percent of --  
19 it says over 98 percent of IDP camps have  
20 closed, correct?

21 A. It says that.

22 Q. Okay. So that was not a change

1 between May -- the May notice and January  
2 notice; the closing of the camps had occurred  
3 by the May notice.

4 A. Well, that is one factor that  
5 appears to be the same. But I don't know that  
6 that's --

7 Q. Okay. Well, I'm just --

8 A. -- exclusive of all the --

9 Q. I'm -- I'm not --

10 A. -- things that's they looked at.

11 Like we talked about earlier though,  
12 the fact that they mentioned a few things in  
13 this May notice doesn't mean that they didn't  
14 think about other things. And I would assume  
15 that was the same practice that they maintained  
16 when I was gone.

17 Q. I'm not trying to imply that's the  
18 -- the only factor. I'm just --

19 A. Sure.

20 Q. -- trying to --

21 A. I was just trying to explain myself.

22 Q. Yeah. Just trying to go through and

1 see what was different; what wasn't different.

2 That's the basic exercise.

3 In the January notice, there's also  
4 a reference to only approximately 38,000 of the  
5 estimated 2 million Haitians who lost their  
6 homes in earthquake were still living in camps.

7 Do you see that?

8 A. I see that.

9 Q. And the comparable statement in the  
10 May notice is 55 -- over -- over 55,000  
11 Haitians who lost their homes in the earthquake  
12 are still living in the camps, correct?

13 A. That's what it says.

14 Q. Now, in the May notice as well, it  
15 goes on to say that: "Some" -- in the same  
16 paragraph: "Some people who were displaced by  
17 the earthquake, although no longer living in  
18 camps, had moved back to unsafe homes or  
19 relocated to informal settlements located in  
20 hazardous areas."

21 Do you see that?

22 A. I do.

1 Q. Was that still true as of January of  
2 2018?

3 MR. TYLER: Objection. I mean these  
4 documents speak to themselves.

5 Are -- are you asking whether those  
6 facts are reflected in the January 2018  
7 document?

8 MR. MEDOW: Yes. That's -- I'm  
9 asking if those facts were still true as of  
10 January '18.

11 MR. TYLER: If he has independent  
12 knowledge?

13 MR. MEDOW: If he knows.

14 THE WITNESS: I was not familiar  
15 with what went into the January notice. I  
16 didn't work at DHS. I'm not an independent  
17 subject matter expert on conditions in Haiti.

18 Again, though, it seems to note the  
19 difference between 55,000 Haitians in May and  
20 38,000. That's, what, 17,000 people. That's a  
21 pretty substantial improvement.

22 BY MR. MEDOW:

1 Q. Outs of 2 million total, correct?

2 A. "Only 38,000 of 2 million total were  
3 still living in camps," is what the thing says.

4 Q. So --

5 A. So that's -- but between 55 to 38,  
6 17,000, that's a substantial percentage of the  
7 folks who were living in temporary shelters of  
8 some kind.

9 So to me that's -- that look -- that  
10 appears to be market progress. But again,  
11 I'm --

12 Q. So in --

13 A. -- just seeing this for the --

14 Q. So in May, of the 2 million who had  
15 lost their homes, there were 55,000 left in the  
16 camps; and that -- of those 2 million, it  
17 was -- it moved from 55,000 to 38,000 between  
18 May and January, according to the notices,  
19 correct?

20 A. According to the notices.

21 Q. Now, it's also referenced in the  
22 January notice that Haiti successfully

1 completed its presidential election in February  
2 of 2017, correct?

3 A. Where does it say that?

4 Q. Exhibit 150, third page, first  
5 column.

6 A. Yep. I see that. "Haiti  
7 successfully completed its president election  
8 in February 2017. The 2010 earthquake  
9 destroyed key government infrastructure,  
10 including dozens of primary federal buildings,  
11 which the Haitian government is working to  
12 rebuild. The supreme court is already  
13 reinstructed and operational. And in April  
14 2017, the president announced a project to  
15 rebuild Haiti's national palace."

16 Q. Focusing on "Haiti successfully  
17 completed its presidential election in February  
18 2017."

19 So that had occurred by the time of  
20 the May 2017 notice, correct?

21 A. Yes. I would assume so.

22 Q. And the notion -- also it's



1 referenced, as you just read, in the January  
2 2018 notice: "The Supreme Court is already"  
3 reconstruction "and operational."

4 Do you see that?

5 A. That's what I just read.

6 Q. And that -- that occurred in 2015,  
7 didn't it, sir?

8 A. I couldn't tell you.

9 Q. Did it happen between May of 2017  
10 and January of 2018?

11 A. Don't know.

12 Q. And it goes on -- in the paragraph  
13 you read, in -- in the January of 2018 notice,  
14 it goes on to say that, in April of 2017, the  
15 president had announced a project to rebuild  
16 the national palace, correct?

17 A. I see that.

18 Q. And that had happened then before  
19 the May 2017 notice, correct?

20 A. Well, it appears from the text that  
21 it was an announcement in April. So that would  
22 be before May.

1           Q.       In the January notice, it also  
2       indicates that -- last paragraph in that first  
3       column: "The economy continues to recover."

4                   It goes on to say that: "Annual GDP  
5       growth has been 1.7 percent over the period  
6       2010 to 2016," right?

7           A.       That's what it says.

8           Q.       So that covered a period prior to  
9       the May 2017 notice, correct?

10          A.       That's -- again, predates the May  
11       notice.

12          Q.       And the May notice itself had  
13       indicated -- well, I'm not finding the  
14       reference. So I don't want to waste more of  
15       your time.

16                   In the January notice, there's also  
17       a reference to cholera, the cholera outbreak  
18       being at its lowest level.

19                   Do you see that?

20          A.       That's what it says.

21          Q.       How much had it improved -- the  
22       situation improved, to your knowledge, between

1 May of 2017 and January of 2018?

2 MR. TYLER: So you're asking for his  
3 personal knowledge?

4 MR. MEDOW: To the extent he knows.

5 THE WITNESS: You -- we've already  
6 covered this. And again, I am not a subject  
7 matter expert on conditions on the ground in  
8 Haiti.

9 So I assume that they improved. But  
10 as -- as far as the information that was  
11 conveyed to me before I left DHS, conditions  
12 were improving. And as I said before, the  
13 decision in May was a very, very, very close  
14 call for then Secretary Kelly.

15 BY MR. MEDOW:

16 Q. But nevertheless, the decision in  
17 May was to extend, correct?

18 A. The secretary did make a decision to  
19 extend in May. It was a very, very close call.  
20 And that's the type of decision that is  
21 properly committed to the head of a cabinet  
22 agency to make. Those are the tough calls that

1 the executive branch has to make.

2 Q. Focusing again on the cholera.

3 So -- just so we're clear.

4 To the -- you don't know whether or  
5 to what extent the cholera situation improved  
6 between May of 2017 and January of 2018.

7 A. Sitting before you today --

8 Q. Yes.

9 A. -- I don't -- I didn't research  
10 cholera conditions on the ground in Haiti  
11 before I came to my deposition today. So I  
12 couldn't tell you.

13 Q. Did you research them at any point  
14 in time?

15 A. I don't know. I don't remember.

16 Q. Okay.

17 A. I -- I know that these were --  
18 things were generally made known to us when I  
19 was at DHS as we were evaluating this issue.  
20 But I couldn't tell you specifically what rates  
21 of cholera were sitting here before you today.

22 Q. In the May notice, Exhibit 140,

1 third page, second column now: "It was noted  
2 that, as of May, progress has been made in  
3 combatting cholera," correct?

4 A. Where does it say that?

5 Q. In that column about seven lines  
6 down?

7 A. This is the May notice.

8 Q. Yes, sir.

9 Third --

10 A. "However, progress has been made in  
11 combatting cholera."

12 Q. So that was in the May notice,  
13 correct?

14 A. Well, it says -- it doesn't say. It  
15 just says Haiti has made some progress in the  
16 health sector.

17 Whereas, this one from January says:  
18 "Cholera is currently at its lowest level since  
19 the outbreak began."

20 I would assume that there must be  
21 some kind of a difference between those two  
22 statements. To the laymen, it wouldn't. It

1 would appear that way.

2 Q. But again, you can't tell us to what  
3 extent conditions actually did improve with  
4 respect to cholera between the two dates?

5 A. No. All I can do is read -- read to  
6 you what the words say. And the words seem to  
7 indicate that things were likely different.  
8 They didn't use the same language.

9 (Deposition Exhibit 151 was marked  
10 for identification.)

11 BY MR. MEDOW:

12 Q. Okay. Now, you've been handed,  
13 Mr. Hamilton, what's been marked as Exhibit  
14 151.

15 This is a document from the  
16 certified administrative record. Bears Bates  
17 AR-HAITI-00000046 through 63.

18 This is -- do you see this is a  
19 USCIS document?

20 A. It appears to be.

21 Q. And the -- it deals with "TPS  
22 considerations: Haiti, October 2017"?

1 Do you see that?

2 A. That's what it says.

3 Q. If you -- directing your attention  
4 to Page 4, I --

5 A. Is this Bates page 49?

6 Q. Yeah. Let me -- let me clean that  
7 up.

8 If you look at Bates 48, do you see  
9 the section beginning "Cholera Epidemic and  
10 Healthcare" --

11 A. I --

12 Q. -- which continues on to 49?

13 A. Yes.

14 Q. Okay. On 49 do you see at the  
15 bottom of the text on that page, last paragraph  
16 says: "While progress has been made in  
17 combating cholera, since the peak of the  
18 epidemic in 2011, cholera has become endemic in  
19 Haiti with 'seasonal peaks regularly triggering  
20 emergency interventions.' In 2016 the number  
21 of suspected" -- well, let me stop there.

22 To your knowledge, sir, was that

1 information that cholera has become endemic in  
2 Haiti with seasonal peaks triggering emergency  
3 intervention, was that information conveyed in  
4 the January 2018 Federal Register notice,  
5 Exhibit 150?

6 MR. TYLER: I'll object. These  
7 documents speak for itself.

8 You, sir, have made the point that  
9 this witness has no independent knowledge of  
10 the cholera outbreak, its history, et cetera,  
11 et cetera.

12 MR. MEDOW: I want to make sure I'm  
13 not misreading the document and missing  
14 something.

15 THE WITNESS: Well, I mean there's  
16 -- there appears to be 17 pages of country  
17 conditions reflected in this report that are  
18 not -- clearly this Federal Register notice is  
19 not the same length. So there's a lot of  
20 information that's probably in here that may  
21 not be in the Federal Register notice.

22 But I don't know what bearing that



1 has on anything.

2 MR. MEDOW: Well, we'll let the  
3 court decide that.

4 BY MR. MEDOW:

5 Q. My question is simply was there any  
6 discussion in the January, February '18 notice  
7 of the fact that cholera has become endemic in  
8 Haiti?

9 MR. TYLER: Objection. The  
10 documents speaks for themselves.

11 THE WITNESS: I -- I don't see that  
12 sentence. But again, there's 18 pages here.  
13 Just because something's not represented in a  
14 Federal Register notice doesn't mean that it  
15 wasn't before the agency.

16 And it clearly is, as you pointed  
17 out, a U.S. Citizenship and Immigration  
18 Services document. So I have no idea why  
19 things were selected go to in the Federal  
20 Register notice and why they weren't.

21 BY MR. MEDOW:

22 Q. The Federal Register notice sets

1     forth the basis for the secretary's  
2     determination, correct?

3           A.     In general, it explains the basis  
4     for the determination.

5           Q.     Doesn't the statute require that the  
6     secretary "publish notice in the Federal  
7     Register of his determination (including the  
8     basis for the determination)"?

9                   MR. TYLER:  Objection.  Calls for  
10    legal conclusion.

11                   THE WITNESS:  I -- counsel, what --  
12    where are you reading from?

13                   MR. MEDOW:  The statute.

14                   THE WITNESS:  INA Section 244?

15                   MR. MEDOW:  Yes.

16                   THE WITNESS:  Do you have a copy of  
17    it I can see?

18                   MR. MEDOW:  Yes.

19                   (Deposition Exhibit 152 was marked  
20    for identification.)

21                   BY MR. MEDOW:

22           Q.     You've been handed Exhibit 152.

1                   Do you recognize this as the TPS  
2     statute?

3           A.       It appears to be the -- the Westlaw  
4     printout of the TPS statute.

5           Q.       Okay. Directing your attention to 8  
6     USC Section 1254a(b)(3)(B), the termination of  
7     designation provision.

8           A.       Okay.

9           Q.       Do you see where it reads that, if  
10    certain conditions are met, the attorney  
11    general -- which that later is read to mean the  
12    secretary of DHS, correct, under the DHS  
13    statute?

14          A.       That's correct.

15          Q.       Okay. So the secretary of DHS  
16    "shall terminate the designation by publishing  
17    notice in the Federal Register of the  
18    determination under this subparagraph  
19    (including the basis for the determination),"  
20    correct?

21          A.       That's what it says.

22          Q.       Okay. Going back to the longer

1 memo, 151.

2 Do you have that?

3 A. Yes.

4 Q. Bates 50. Still on the cholera  
5 discussion, the top sentence reads: "While the  
6 number of suspected cases of cholera has  
7 decline since 2016, Haiti nevertheless remains  
8 'extremely vulnerable' to the disease."

9 Do you see that?

10 A. I do.

11 Q. Was that information put forth in  
12 the Federal Register notice in January 2 --  
13 2018?

14 MR. TYLER: Objection. The document  
15 speaks for itself.

16 It's just -- this is argumentative.  
17 Just -- you're seemingly arguing on behalf of  
18 your opinion that the wrong decision was  
19 reached. Yet this is a fact witness.

20 THE WITNESS: I mean I -- I can --  
21 we can sit here all day, and we can read the  
22 different TPS notices.

1 But as I've pointed out repeatedly,  
2 there's 18 pages of things here. Just because  
3 something appears in this report and it doesn't  
4 appear in the notice doesn't mean that the  
5 notice is somehow inadequate.

6 It explains the basis for the  
7 secretary's decision. It's a discretionary  
8 decision that's committed to the secretary  
9 that's not supposed to be judicially reviewable  
10 by statute.

11 So, you know, I -- I don't know what  
12 we're doing here. But we can keep -- we can  
13 keep reading the documents. It's fine by me.

14 BY MR. MEDOW:

15 Q. Somebody had to make a decision as  
16 to what information in 151 would make its way  
17 into 150, correct?

18 A. Presumably someone would have to  
19 decide what to put in the Federal Register  
20 notice.

21 Q. And as far as we can tell, whoever  
22 that person was decided not to include the

1 information that "Haiti remains 'extremely  
2 vulnerable' to cholera," correct?

3 MR. TYLER: Objection.  
4 Argumentative.

5 THE WITNESS: I -- there is, again,  
6 18 pages of things in here that mostly do not  
7 appear to be captured in the Federal Register  
8 notice. It does not mean they were not  
9 considered. And it doesn't mean that it's  
10 relevant whatsoever.

11 Because there's a lot of good things  
12 in here, and there's a lot of, you know, maybe  
13 not so good things. I don't know. Just  
14 depends on your perspective.

15 There is a lot of factual  
16 information in this USCIS report. And there's  
17 no requirement for USCIS to put an 18-page  
18 report into a Federal Register notice.

19 What's required is for the secretary  
20 to record their decision and why they're making  
21 that decision. And that appears to be what  
22 they did in January of 2018.

1 BY MR. MEDOW:

2 Q. Can you point me to any good  
3 information in 151 that -- that was not  
4 reported in 150?

5 MR. TYLER: Objection. This is  
6 argumentative. The document speaks for itself.

7 What's the purpose for this, other  
8 than arguing with this witness about whether an  
9 appropriate decision was made or not.

10 THE WITNESS: I mean, like I said,  
11 if you want to -- if you want to sit here, give  
12 me time, I will read over this entire 18-page  
13 document right now, and we can talk about every  
14 specific sentence in this document if that's  
15 what you want to do.

16 BY MR. MEDOW:

17 Q. Are you -- as you sit here right  
18 now, are you aware of what -- anything that you  
19 could call good information that was not  
20 reflected in the notice?

21 MR. TYLER: Objection.

22 Again, you're referring to a January

1 2018 notice. This witness was no longer with  
2 the Department of Homeland Security. He has no  
3 factual knowledge of this as such. You're just  
4 arguing with him.

5 THE WITNESS: This document  
6 allegedly describes varying changing conditions  
7 within the country of Haiti, various  
8 improvements, various declines, just depending  
9 on the subject matter that you're looking at,  
10 describing all kinds of different factors.

11 You know, again, I don't -- I don't  
12 know specifically what it is that you're  
13 interested in here. There's all kinds of  
14 information in here that is not necessarily  
15 reflecting in the Federal Register notice, nor  
16 does this purport to be the only document that  
17 DHS looked at at the time they made their  
18 decision.

19 So if, you know, if -- if your  
20 insinuation is that somehow this entire report  
21 needed to be reported in the Federal Register,  
22 you're fine to -- you're fine to believe that.



1 BY MR. MEDOW:

2 Q. Exhibit 151, first page.

3 Do you have that?

4 A. I do.

5 Q. Second paragraph, second sentence  
6 reads: "Many of the conditions prompting the  
7 original January 2010 TPS designation persist,  
8 and the country remains vulnerable to external  
9 shocks and internal fragility," correct?

10 A. That's what it says.

11 Q. Last page of the exhibit, last  
12 sentence is: "Due to the conditions outlined  
13 in this report, Haiti's recovery from the 2010  
14 earthquake could be characterized as falling  
15 into what one nongovernmental organization  
16 recently described as 'the country's tragic  
17 pattern of 'one step forward, two steps back.'"

18 Did I read that correctly?

19 A. That's what it says.

20 MR. MEDOW: Okay. Let -- let me  
21 give you another exhibit.

22 MR. TYLER: Counsel, you're just

1 asking him to read from documents that speak  
2 for themselves.

3 Is this why we're here this  
4 afternoon?

5 MR. MEDOW: We're here for  
6 discovery.

7 MR. TYLER: Of facts.

8 MR. MEDOW: Yeah.

9 MR. TYLER: Which we have not  
10 touched upon in some 45 minutes now.

11 MR. MEDOW: Well, that's your view.

12 (Deposition Exhibit 153 was marked  
13 for identification.)

14 BY MR. MEDOW:

15 Q. Okay. Mr. Hamilton, you should now  
16 have Exhibit 153 --

17 A. Yep.

18 Q. -- in front of you, a one-page  
19 document. Appears to been an e-mail you sent  
20 on Friday, April 7th, 2017, 7:58 a.m., Bates  
21 CP\_00001526.

22 A. Got it.

1           Q.       Is this, in fact, an e-mail you sent  
2   on April 7, 2017?

3           A.       It looks like it.

4           Q.       And you -- this was an internal  
5   e-mail, right; it went to just people at DHS?

6           A.       It looks that way.

7           Q.       The subject of the e-mail is "TPS"?

8           A.       It is.

9           Q.       Okay. You write -- you make  
10   reference in the first line to S1.

11                   That, again, is Mr. Kelly at this  
12   point?

13           A.       That would be correct.

14           Q.       And you -- you say in the first  
15   paragraph: "Mr. Kelly wants a small briefing  
16   on TPS likely on Monday."

17                   I'll skip the next sentence.

18                   You go on in the next paragraph to  
19   say: "In addition to the general TPS document  
20   we had last week (showing country, designation,  
21   expiration, et cetera) he would like the  
22   following related to Haiti."

1 Do you see that?

2 A. I do.

3 Q. "He," again, would be referring to  
4 Secretary Kelly, correct?

5 A. Yep.

6 Q. And you -- you ask questions -- or  
7 the information -- for example, the first  
8 bullet on -- you like the -- it says:  
9 "Secretary Kelly would like the following  
10 related to Haiti," first item, "Details on how  
11 many are on public and private relief,"  
12 correct?

13 A. That's what it says.

14 Q. Okay. By "how many" there, you're  
15 referring to how many Haiti beneficiaries of  
16 TPS?

17 A. I would assume so.

18 Q. And what you're asking -- or you're  
19 passing on the secretary's request to learn how  
20 many of those beneficiaries, among other  
21 things, are on public or private relief,  
22 correct?

1           A.       That -- it appears that that is,  
2       yes, what this e-mail represents.

3           Q.       Okay. Public or -- by public or  
4       private relief, you meant welfare or what?

5           A.       I would assume so.

6           Q.       And you also, among other things,  
7       were passing on the secretary's request for  
8       information on how many of the TPS Haitian  
9       beneficiaries had been convicted of crimes of  
10      any kind, correct?

11          A.       Correct.

12          Q.       Okay. Do you recall when Secretary  
13      Kelly communicated to you that he wanted this  
14      information?

15          A.       I don't recall specifically.  
16      Presumably it would have been before Friday,  
17      April 7th at --

18          Q.       Would have been --

19          A.       -- 7:58 a.m.

20          Q.       -- about that time?

21          A.       I don't know.

22          Q.       Is this --

1           A.       Maybe.

2           Q.       If the secretary asked you for  
3 information, is it something you jump on to get  
4 out or --

5           A.       I tend to take quick action on  
6 whatever my principal wants.

7           Q.       Did the secretary tell you why he  
8 wanted the information?

9           A.       Did he tell me why he wanted this  
10 information?

11          Q.       The information you're seeking in  
12 the e-mail.

13          A.       I don't recall this specific  
14 situation. But what I can recall is that  
15 Secretary Kelly was very interested in  
16 background, circumstantial evidence,  
17 information, facts related to various decisions  
18 he made as secretary at DHS.

19                   He wanted to be informed, make the  
20 best decisions that he could, and so was very  
21 interested in receiving any available  
22 information so that he could make an informed

1 decision.

2 Q. Do you know if the idea to seek this  
3 information came from Secretary Kelly himself  
4 or if somebody in turn had asked him to get it?

5 A. I -- I couldn't tell you every  
6 discussion Secretary Kelly ever had. But  
7 Secretary Kelly, again, as I've just said,  
8 repeatedly was interested in getting additional  
9 information, no matter what the subject was, on  
10 things so that he could make informed  
11 decisions.

12 And so this appears to be my attempt  
13 to get that information for him.

14 Q. Do you know had DHS sought this type  
15 of information previously in connection with a  
16 decision on whether or not to extend of  
17 terminate a country under TPS?

18 A. I don't -- I don't know specifically  
19 what the prior administration did or didn't ask  
20 for, what they did internally. I wasn't there.

21 I have no idea what they looked at,  
22 what they considered. That would be pure

1 speculation on my part.

2 Q. Did DHS track the type of  
3 information you were seeking to collect?

4 A. Oftentimes not. Oftentimes their  
5 systems did not collect information that a  
6 principal might assume that an agency would  
7 have, such as how many people have been  
8 convicted of crimes who were living in the  
9 United States under the good graces of the  
10 United States Government so I -- that seems  
11 like a reasonable thing for a principal to want  
12 to ask to know.

13 And the fact that the department  
14 didn't seem to have it oftentimes was  
15 interesting.

16 Q. As you write in the e-mail, this  
17 request was specific to Haiti, correct?

18 A. It looks -- it says: "He would like  
19 the following related to Haiti."

20 Q. Was the -- the same information  
21 sought with respect to citizens of any other  
22 country designated under TPS, to your



1 knowledge?

2 A. I don't remember. But what I do  
3 know is that Secretary Kelly was gone in July  
4 of 2017. And many of those other decisions  
5 were made after July of 2017.

6 So I don't -- I don't know. I don't  
7 remember what was asked for. Different  
8 principals have different styles. They want  
9 different kinds of information. I don't recall  
10 if Acting Secretary Duke wanted this  
11 information or if she doesn't.

12 All I know is that Secretary Kelly  
13 wanted more information, very curious by  
14 nature, wanted to know things so he could make  
15 good decisions.

16 Q. Looking at the -- I guess formally  
17 third paragraph from the bottom, you write:  
18 "Please keep the prep for this briefing limited  
19 to those on this e-mail. If you need a  
20 specific data set and need to ask someone to  
21 pull it, please do not indicate what is it for.  
22 I don't want this to turn into a big thing

1 where people start prodding and things start  
2 leaking out."

3 Do you see that?

4 A. I do.

5 Q. What were you concerned might start  
6 leaking out?

7 A. Well, as I recall -- I seem to have  
8 a vague recollection of some of this  
9 information -- the fact that this was asked for  
10 actually did seem to get in the news somehow.

11 People run to the media when  
12 they think that there's something that's  
13 newsworthy. And it's disappointing because a  
14 principal needs to have information to make  
15 informed decisions; and if a principal can't  
16 get that information without it going to the  
17 media or to some kind of litigant or somebody,  
18 they can't make the right decisions that they  
19 need to make. It is very unfortunate.

20 So this is an expression from me  
21 that we wanted to get this information, but at  
22 the same time, we don't want it to blow up and

1 turn into a media spectacle, media circus, so  
2 that he couldn't make the decision that he  
3 needs to make.

4 Q. Was there something about the  
5 request itself that concerned you it might blow  
6 up into a media spectacle?

7 A. Any time you ask for information on  
8 anything -- anything that we've done involving  
9 immigration anywhere where I have worked gets  
10 medical were attention. It's just the nature  
11 of it.

12 This is April. I mean there's media  
13 inquiry poking into everything. Things leak  
14 out of USCIS left and right. It's just the  
15 nature of business right now.

16 So if -- if -- it -- it's very  
17 rational that a principal would want to ask for  
18 information, be able to ensure that his  
19 requests for confidential information are kept  
20 confidential, and that he receives that  
21 information without having to deal with  
22 inquiries as to why he's asking for it.

1           It's -- it's -- it's why this --  
2   this entire exercise is silly.

3           Q.     Did you believe, at the time you  
4   sent the e-mail, that the information being  
5   sought was relevant to the decision on Haiti?

6           A.     It could have been. It could not  
7   have been. He wanted more information. As I  
8   recall, there is one specific subsection under  
9   the TPS statutes. And you have it here in  
10   Exhibit 152 about designations under subsection  
11   C.

12                   And it says specifically: "Unless  
13   the attorney general," secretary, "finds that  
14   permitting the aliens to remain temporarily in  
15   the United States is contrary to the national  
16   interest of the United States."

17                   So conceivably maybe some of this  
18   could factor into that decision. But who  
19   knows. If it's -- you know, I mean if there's  
20   lots of criminals, I think a principal could  
21   decide that there's -- it might be contrary to  
22   the interest of the United States. But maybe

1     there's not, and so maybe he decides it is not  
2     contrary to the interest of the United States.

3             It's -- it's, again, part of a  
4     practice of getting information so you can make  
5     good decisions.

6             Q.     As you alluded to, the fact this  
7     information was being sought did leak, correct?

8             A.     It -- it seems to ring a bell.

9             (Deposition Exhibit 154 was marked  
10    for identification.)

11            THE WITNESS:   Thank you, ma'am.

12            BY MR. MEDOW:

13            Q.     Okay.   Mr. Hamilton, you now have  
14     Exhibit 154, which is simply an article we  
15     printed off the Internet dated May 9, so  
16     roughly a month after your e-mail in 2017.

17            Is this related to the leak you were  
18     mentioning?

19            A.     This -- I mean, again, I don't have  
20     a specific recollection of how it leaked or  
21     where or when.   But it appears to be related.

22            Q.     Okay.   And just so we have the

1 context, looking on the first page, the author  
2 of the article says: "Internal e-mails  
3 obtained by the Associated Press show a top  
4 immigration official wanted not only crime data  
5 on Haitians who are protected under -- from  
6 deportation under the Temporary Protected  
7 Status program but also how many were receiving  
8 public benefits," correct?

9 A. Yep.

10 Q. And that is the same subject matter  
11 as your -- or addressed in your e-mail, 153,  
12 correct?

13 A. Appears to be the same.

14 It's unfortunate that principals  
15 can't ask questions to get information. They  
16 can't get facts without being worried about it  
17 leaking to the press or coming out in  
18 litigation. So it frustrates their ability to  
19 make decisions.

20 Q. Looking on the second page of the --  
21 Exhibit 154, third paragraph says: "Department  
22 spokesman David" -- is it Lapan?

1           A.       Lapan.

2           Q.       -- "said Tuesday that criminal  
3   history and other information requested by  
4   policy chief Kathy Nuebel Kovarik won't be used  
5   to make a final decision about Temporary  
6   Protected Status. Lapan" -- or "Lapan" -- how  
7   is it said?

8           A.       Lapan.

9           Q.       Lapan.  
10                    "Lapan said the questions were asked  
11   so that Kelly could have a fuller understanding  
12   of who is in the program."

13                   Was Mr. Lapan authorized, as far as  
14   you know, to make those statements?

15          A.       Dave Lapan was the department  
16   spokesman. So he would have been authorized to  
17   talk to the press.

18          Q.       Did you have input or weigh in on  
19   how the department should respond to the leaked  
20   e-mails?

21          A.       I don't recall.

22          Q.       Okay. Did you agree with the

1 approach Mr. Lapan took, as reported in Exhibit  
2 154?

3 MR. TYLER: Objection. Vague.

4 THE WITNESS: Which part? The last  
5 sentence?

6 BY MR. MEDOW:

7 Q. Actually, I'm more -- I'm more  
8 focused on the first sentence that -- where  
9 Lapan says "criminal history and other  
10 information requested won't be used to make a  
11 final decision."

12 Do you see that?

13 Were you in agreement with that  
14 approach?

15 A. I don't know. I mean it won't be  
16 used. I'm not sure if that's accurate or not.  
17 I suppose it could be used for that reasons  
18 that I said earlier.

19 But I -- I mean, you know, who knows  
20 if it's -- the press has a -- what a reporter  
21 says -- it's not a direct quote. It says that  
22 it won't be used to -- I don't know what Dave



1 told Ms. Caldwell, the reporter, if he said  
2 that it wouldn't be the factor, a factor. I  
3 have no idea what he told her, what their  
4 conversation was like.

5 And so I couldn't tell you whether  
6 or not I agree with it or disagree with it  
7 completely.

8 Q. Now, the decision -- as we've seen  
9 before, the decision on Haiti, the first  
10 decision, was in late May of 2017, right?

11 A. It sure was.

12 Q. Prior to the release -- public  
13 release of the decision, do you recall being  
14 involved in discussions and -- or -- or  
15 internal meetings about how do you respond to  
16 press inquiries relating to that decision?

17 A. I generally, as part of my duties,  
18 assisted with guidance from the secretary's  
19 perspective on responding to press inquiries.

20 Q. That -- that's something you would  
21 typically do, right, on a --

22 A. In general.

1 Q. Yeah?

2 A. I couldn't tell you if we did it  
3 every time or most of the time or -- or not. I  
4 just know that it -- from time to time it would  
5 come up.

6 MR. MEDOW: Okay.

7 (Deposition Exhibit 155 was marked  
8 for identification.)

9 BY MR. MEDOW:

10 Q. Okay. Mr. Hamilton, you should now  
11 have 155, Exhibit 155, a multipage e-mail  
12 bearing Bates DPP\_00007775 through 78.

13 Note -- and direct your attention --  
14 do you see in the "To" line on the first page  
15 you're one of the recipients?

16 A. I see that.

17 Q. Is this, in fact, an e-mail you  
18 received on or about May 20th of 2017?

19 A. I assume so.

20 Q. And this -- the subject line of the  
21 e-mail is "Approval and Input Needed: Draft  
22 Talking Points in QA for Haiti TPS Announcement

1 Monday," correct?

2 A. That's what it says.

3 Q. And the author, a Ms. Claffey,  
4 C-L-A-F-F-E-Y, correct?

5 A. Yep.

6 Q. Was she in the press office or what?

7 A. Her signature line says "Deputy  
8 Assistant Secretary for Strategic  
9 Communications, Office of Public Affairs, U.S.  
10 Department of Homeland Security."

11 Q. It does indeed.

12 And she writes that: "Please find  
13 attached and below draft talking points in Q&A  
14 document for Monday's announcement on Haiti TPS  
15 extension," correct?

16 A. That's what it says.

17 Q. And she asks for edits and approval,  
18 right?

19 A. "We are asking for edits and  
20 approval as well as any additional questions  
21 and answers that you think could come up in  
22 conversations with media and stakeholders."

1 Q. Okay. And is this -- is it a  
2 typical practice surrounding decisions of this  
3 nature to try to anticipate questions that may  
4 come up and provide proposed answers?

5 A. I mean it's a very broad question.  
6 But generally, yes, that's the job of a press  
7 office --

8 Q. The --

9 A. -- department to provide information  
10 and, in this case, to, as the subject line  
11 says, draft, to have deliberative process, and  
12 to have -- be able to freely discuss draft  
13 documents.

14 Who knows if all the information is  
15 correct. And so they solicit viewpoints from  
16 various people within the departments to make  
17 edits and make the best product that they can.

18 Q. Okay. Second page of the document  
19 under "Questions and answers," do you see that?

20 A. I do.

21 Q. Skipping over the first block, do  
22 you see the next block says: "War crime and

1 public benefits data used to make the  
2 decision?"

3 Then it appears to be the proposed  
4 answer is: "No. Criminal history and public  
5 benefit usage was not used as criteria for the  
6 TPS determination. The decision was based on  
7 whether Haiti met the statutory conditions for  
8 TPS."

9 Do you see that?

10 A. I see that.

11 Q. Did you provide any edits or  
12 approval for that response?

13 A. I have no idea. This is the draft  
14 that the office --

15 Q. I understand that?

16 A. -- of public affairs sent. I don't  
17 -- I couldn't tell you --

18 Q. Did you --

19 A. -- what I edited, if I edited. I  
20 have no recollection.

21 Q. Do you recall whether or not you  
22 agreed or disagreed with the proposed answer?

1           A.       Don't -- I don't recall.

2           Q.       Turning the page, so Bates 77.

3   Third paragraph reads: "Why Secretary Kelly  
4   requested data on TPS Haiti recipients to USCIS  
5   staff?"

6                   Seems the proposed answer is:

7   "Secretary Kelly, separate and distinct from  
8   the decision on TPS for Haiti, asked DHS staff  
9   for information to increase his understanding  
10  of how the TPS program operates and the  
11  elements of information we have on program  
12  recipients."

13                  Do you see that?

14          A.       I see that.

15          Q.       Same question as before: Did you  
16  offer any opinion on that proposed answer?

17          A.       I could not tell you today, nearly  
18  two years later, whether or not I edited  
19  specific questions and answers on a draft  
20  deliberative document circulated between lots  
21  of people within the department. I have no  
22  idea. That's why we have a deliberative

1 process.

2 Q. Do -- does- - as you sit here, do  
3 you recall whether or not you agreed with the  
4 proposed answer?

5 A. I have -- I have no idea. I don't  
6 recall what I thought then. You're asking me  
7 about what I thought two years ago about a  
8 draft document that the press shop put  
9 together. I have no idea.

10 Q. And two paragraphs down reads: "How  
11 much did information about criminal activity by  
12 Haitians in the U.S. factor into the decision?"

13 Proposed answer is: "None. The  
14 decision was based on whether Haiti met the  
15 statutory conditions for TPS."

16 Same question: Do you recall  
17 whether at the time you agreed or disagreed  
18 with the proposed answer?

19 A. And I'll give you the same answer,  
20 which is I have no idea.

21 This -- this is crazy. Because  
22 we're sitting here talking about a draft

1 document circulated within a department and  
2 not -- I -- I don't know what we're doing here.

3 BY MR. MEDOW:

4 Q. The press call that happened  
5 thereafter, the embargoed call we talk about  
6 before --

7 A. The one that someone said was  
8 embargoed in their notes?

9 Q. Yes.

10 Or actually testified that's what  
11 the notes were of, an embargoed press call.

12 A. Okay.

13 Q. During that press call, did this  
14 subject come up, namely the seeking of  
15 information on Haitian criminal activity and  
16 benefits --

17 A. I couldn't -- I couldn't tell you.

18 Q. Let's -- if we could pull out 136.

19 MR. TYLER: What document is that?

20 MR. MEDOW: It is the notes.

21 BY MR. MEDOW:

22 Q. Got them?



1 A. These were Ms. Anderson's --

2 Q. Correct.

3 Let me direct your -- I'm going to  
4 direct your attention to certain sections and  
5 see if it jogs your recollection.

6 Again, I'll -- I'll represent to you  
7 she testified this was her notes from this call  
8 with media members embargoed. She said -- she  
9 testified that you were there, and you spoke  
10 during the call.

11 Looking on the first page, the --  
12 the very first entry -- make sure I read it  
13 right -- she read this into the record at her  
14 deposition on Page 90 -- 297.

15 And that first -- first entry she  
16 read is: "S1," again Mr. Kelly "made decision  
17 on Section 244, nothing more."

18 Do you see that?

19 A. I see that.

20 Q. Do you recall whether or not you  
21 were the person who made that comment?

22 A. I -- I don't recall.

1 Q. That comment would be consistent  
2 with the talking points memo we just looked at,  
3 correct?

4 A. It seems to indicate the same thing.

5 Q. Similarly on the next page, Bates  
6 Page 9, at the bottom she recorded the  
7 following, according to her testimony at Page  
8 301 of her deposition: "Crime? S1 made his  
9 decision on factors outlined in" -- "in 244."

10 It goes on: "S1 asked" -- "asked  
11 for" -- "S1 asked for information. Is about  
12 program -- programatic integrity, common sense  
13 questions like crime, employed, in school.  
14 U.S. has not previously collected or reported  
15 on previously. S1 needs to be able to answer  
16 to American people."

17 Do you -- were you the person who  
18 uttered those comments, to the best of your  
19 recollection?

20 A. I have no idea. As I've said  
21 before, if I was on this specific call, if  
22 those are my -- in fact, my comments, I don't

1 know.

2 Q. The message again is consistent with  
3 the talking points, correct?

4 A. It seems to be consistent with the  
5 talking points. And it seems to be consistent  
6 with the general proposition that the secretary  
7 wanted to make his decisions with information.

8 Q. Did you believe at that time that  
9 efforts should continue to try to collect the  
10 type of information you had addressed in your  
11 April e-mail?

12 A. Did I believe at that time that we  
13 should be able to collect that information?

14 Q. We've -- we've been looking at the  
15 talking points and the press call late May.

16 A. Sure.

17 Q. In April, the prior month, you had  
18 sent around an e-mail seeking various  
19 information.

20 At the time of the press inquiries  
21 and calls in late May, did you remain of the  
22 view that the department should continue trying

1 to seek the information on Haitian TPS  
2 beneficiaries as reflected in your April  
3 e-mail?

4 MR. TYLER: Objection. It misstates  
5 testimony -- prior testimony and the evidence.  
6 The -- the record seems to indicate it was the  
7 secretary that asked Mr. Hamilton to collect  
8 that information.

9 BY MR. MEDOW:

10 Q. Did you think that information  
11 should be collected --

12 A. Did I think --

13 Q. -- going forward from May?

14 A. Did I think that this information  
15 should be collected?

16 Q. Yes. The information reflected in  
17 your April 7th e-mail, 153.

18 A. I couldn't tell you my state of mind  
19 at that point in time. But seems reasonable.  
20 To be able to determine how many people have  
21 been convicted of crimes seems like pretty  
22 relevant information for a decision maker.

1 MR. MEDOW: Let me -- let me show  
2 you another document.

3 (Deposition Exhibit 156 was marked  
4 for identification.)

5 THE WITNESS: Thank you, ma'am.

6 BY MR. MEDOW:

7 Q. Okay. Mr. Hamilton, you've been  
8 given now what's been marked as Exhibit --

9 MR. MEDOW: May have given you the  
10 wrong one. I apologize. Put that one aside  
11 for now. Yes. I apologize.

12 (Deposition Exhibit 157 was marked  
13 for identification.)

14 THE WITNESS: Thank you, ma'am.

15 BY MR. MEDOW:

16 Q. Okay. Let -- let me orient you,  
17 Mr. Hamilton, on Exhibit 157. These are,  
18 again, notes from Ms. Anderson.

19 A. Okay.

20 Q. And she has testified that -- it is  
21 268 of her transcript -- that these are notes  
22 from a meeting she had on May 19 -- so roughly

1 the same time period we've been talking  
2 about -- with you and -- I guess it's- - at  
3 that point Assistant Secretary Duke.

4 A. You mean Deputy Secretary --

5 Q. I --

6 A. -- Duke.

7 Q. I'll take your correction.

8 Ms. Duke and you.

9 A. Okay.

10 Q. And let me direct your -- direct you  
11 to the carryover from Bates Page 2 to Bates  
12 Page 3. And let me read to you from Page 275  
13 of Ms. Anderson's deposition how she read her  
14 notes for us.

15 And it -- it's starting with -- five  
16 lines from the bottom on Bates 02, she wrote:  
17 "Gene - we haven't tracked data public  
18 benefits. We don't know," with a question mark  
19 -- I'm sorry. Question mark after "public  
20 benefits."

21 Goes on to say: "We don't know,  
22 hey, what are you doing with your time here.

1 During next six months for Haiti and going  
2 forward, have to increase reporting and metrics  
3 so we can tell American people what is  
4 happening, not limit it to TPS."

5 Do you see that?

6 A. I do.

7 Q. She I believe said you were the  
8 speaker of these comments as indicated by the  
9 notation "Gene."

10 Do you recall making comments of  
11 this sort in the May 19, 2017 time period?

12 A. I don't remember a May 19th meeting.  
13 I don't remember what meeting this specifically  
14 was.

15 But as I've indicated, it seems  
16 rational for a department to have facts and  
17 information for principals to be able to make  
18 decisions on.

19 Q. And are these notes consistent with  
20 your view as of May 19th of 2017 that, in  
21 particular during the next six months, this --  
22 the type of information we've been talking

1 about should be sought on Haitians?

2 A. Which parts of the notes?

3 Q. The -- the part I read, the  
4 carryover from Bates 2 to Bates 3.

5 See, the very last line on 2 is:

6 "During next six months for Haiti and going  
7 forward, have to increase reports of metrics so  
8 we can tell American people what is happening."

9 A. And so what's your question?

10 Q. My question is are these notes  
11 consistent with your recollection of your view  
12 as of May 19th of 2017 that going forward the  
13 information should be sought with respect to  
14 Haitian beneficiaries of TPS?

15 A. I don't think that it -- it's a fair  
16 characterization of this being limited to  
17 Haitian beneficiaries.

18 I think my view has been and is now  
19 that department should be able to maintain and  
20 report on facts so that the principals can make  
21 good decisions.

22 Q. Again, do you have any recollection



1 of the department at any time seeking crime or  
2 benefit data on any TPS population other than  
3 Haitians?

4 MR. TYLER: Asked and answered.  
5 Objection.

6 THE WITNESS: I've already answered  
7 your question.

8 BY MR. MEDOW:

9 Q. Your testimony remains as you  
10 testified before?

11 A. Yes.

12 And I see in this note: "S1 and S2  
13 like to make decisions on the facts."

14 Q. Is that something you said?

15 A. I don't know if I said that or not.  
16 But there's a lot of stuff in here that seems  
17 fairly rational.

18 Q. Did -- to your knowledge, sir, did  
19 anyone at DHS ever study whether or not the  
20 Haitian TPS population took more out or put  
21 more in, in a monetary sense, once you take  
22 into account things like tax payments?

1 Do you recall any --

2 A. I have --

3 Q. -- study of that sort?

4 A. -- no idea. Not to -- not to my  
5 knowledge.

6 Q. Was that type of information as to  
7 the net benefit or cost of the Haitian TPS  
8 population, to your recollection, ever  
9 furnished to DHS by any outside groups?

10 A. I don't know.

11 But it would be awfully strange for  
12 an outside group to furnish information like  
13 that if the department itself can't even speak  
14 to it. So it -- therein lies the reason why  
15 you would want to have this information.

16 You can know if it's a good benefit  
17 or if it's not or -- again, principals need to  
18 have information.

19 MR. MEDOW: Okay. We're --

20 THE WITNESS: There is nothing wrong  
21 with asking for information.

22 MR. MEDOW: We're at a good stopping

1 point. About to change subjects. So I'd  
2 recommend we take a short break and try to  
3 finish up.

4 THE VIDEOGRAPHER: We are going off  
5 the record.

6 The time is 3:33 p.m.

7 (A short recess was taken.)

8 THE VIDEOGRAPHER: We are back on  
9 the record.

10 The time is 3:41 p.m.

11 MR. MEDOW: Mr. Hamilton, at this  
12 time I have no further questions.

13 I pass the witness.

14 MR. TYLER: No questions from  
15 defendants -- by counsel on behalf of the  
16 defendants.

17 MR. MEDOW: Okay.

18 THE VIDEOGRAPHER: This marks the  
19 end of the deposition of Gene Hamilton.

20 We are going off the record.

21 The time is 3:42 p.m.

22 (Whereupon, the proceeding was

1 concluded at 3:42 p.m.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Bonnie L. Russo, the officer before  
3 whom the foregoing deposition was taken, do  
4 hereby certify that the witness whose testimony  
5 appears in the foregoing deposition was duly  
6 sworn by me; that the testimony of said witness  
7 was taken by me in shorthand and thereafter  
8 reduced to computerized transcription under my  
9 direction; that said deposition is a true  
10 record of the testimony given by said witness;  
11 that I am neither counsel for, related to, nor  
12 employed by any of the parties to the action in  
13 which this deposition was taken; and further,  
14 that I am not a relative or employee of any  
15 attorney or counsel employed by the parties  
16 hereto, nor financially or otherwise interested  
17 in the outcome of the action.

18

19 \_\_\_\_\_.

20 Notary Public in and for  
21 the District of Columbia

22 My Commission expires: June 30, 2020

1 ACKNOWLEDGMENT OF DEPONENT

2 I, GENE HAMILTON, do hereby certify that I  
3 have read the foregoing transcript of my  
4 testimony taken on 1/3/19, and further certify  
5 that it is a true and accurate record of my  
6 testimony (with the exception of the  
7 corrections listed below):

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GENE HAMILTON

19

SUBSCRIBED AND SWORN TO BEFORE ME

20 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

21

22 \_\_\_\_\_  
(NOTARY PUBLIC)

\_\_\_\_\_  
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